



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 31] नई दिल्ली, जुलाई 29—अगस्त 4, 2007, शनिवार/श्रावण 7—श्रावण 13, 1929
No. 31] NEW DELHI, JULY 29—AUGUST 4, 2007, SATURDAY/SRAVANA 7—SRAVANA 13, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पुस्तक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 27 जुलाई, 2007

अगला आदेश होने तक, जो भी पहले हो, यूको बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[फा. सं. 9/24/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 27th July, 2007

का.आ. 2127.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध)
स्कीम, 1970/1980 के खण्ड 3 के उप खण्ड (1) और खण्ड 8 के
उप खण्ड (1) के साथ पंजित बैंककारी कंपनी (उपक्रमों का अर्जन
एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के
खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार,
एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से, वर्तमान में इलाहाबाद
बैंक के कार्यपालक निदेशक श्री एस. को. गोयल (जन्म तिथि
22-9-1953) को 1 अगस्त, 2007 को या उससे बाद उनके पदभार
ग्रहण करने की तारीख से और 30-9-2010 तक, अर्थात् महीने के
अंतिम दिन, जिस दिन वे अधिवर्षित की आयु पूरी करेंगे अथवा
3218 GI/2007 (4815)

S.O. 2127.—In exercise of the powers conferred by
clause (a) of sub-section (3) of Section 9 of the Banking
Companies (Acquisition and Transfer of Undertakings)
Act, 1970/1980 read with sub-clause (1) of clause 3 and
sub-clause (1) of clause 8 of the Nationalized Banks
(Management and Miscellaneous Provisions) Scheme,
1970/1980, the Central Government, in consultation with

the Reserve Bank of India, hereby appoints Shri S. K. Goel (DoB 22-9-1950) presently Executive Director, Allahabad Bank as Chairman & Managing Director, UCO Bank for a period from the date of his taking charge of the post on or after 1st August, 2007 and upto 30-9-2010 i.e. the last day of the month in which he would attain the age of superannuation or until further orders, whichever is earlier.

(F.No. 9/24/2006-BO-I)

G. B. SINGH, Dy. Secy

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 12 जुलाई, 2007

का.आ. 2128.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद एतद्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :

उक्त अनुसूची में—

(क.) "दिल्ली विश्वविद्यालय" के सामने "मान्यता प्राप्त आयुर्विज्ञान अर्हता" [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और "पंजीकरण के लिए संक्षेपण" [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबंध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :

सारणी

| (2) | (3) |
|--|--|
| डॉक्टर ऑफ मेडिसिन, (प्रसूति एवं स्त्री रोग विज्ञान) | एम. डी. (ओ. बी. जी.) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्व-विद्यालय द्वारा प्रदान की गई हो।) |
| प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा : | डी. जी. ओ. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्व-विद्यालय द्वारा प्रदान की गई हो।) |

(सं. यू. 12012/14/2007-एम ई (पी-11)पार्ट]

एस. कं. मिश्रा, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 12th July, 2007

S.O. 2128.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against "Delhi University", under the heading "Recognized Medical Qualification" [hereinafter referred to as column (2)], after the last entry and entry relating therein under the heading "Abbreviation for Registration" [hereinafter referred to as column (3)], the following shall be inserted, namely :

TABLE

| (2) | (3) |
|--|--|
| "Doctor of Medicine (Obst. & Gynae.)" | MD(O.B.G.) (This shall be a recognized medical qualification when granted by Delhi University in respect of students trained at Safdarjung Hospital, New Delhi) |
| "Diploma in Obst. & Gynae." | D.G.O. (This shall be a recognized medical qualification when granted by Delhi University in respect of students trained at Safdarjung Hospital, New Delhi.) |

[No. U. 12012/14/2007-MEIP-II(P)]

S. K. MISHRA, Under Secy.

पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय

(पोत परिवहन विभाग)

(शासक-II अनुभाग)

नई दिल्ली, 21 जून, 2007

का.आ. 2129.—फाइल सं. एच-11020/2/2005-स्वास्थ्य और 1-35019/3/2006-आ.टी.आई. के अंतर्गत जारी किए गए दिनांक 30 सितम्बर, 2005 दिनांक 1 सितम्बर, 2006 के का.आ. सं. 1443(अ.) में अर्बिक्त आशोधन करके तथा सामान्य खण्ड अधिनियम, 1897 (1897 का 10) की धारा 22 के साथ पठित सूचना के अधिकार अधिनियम, 2005 (2005 का 22) की धारा 19 की उपधारा (1) के अनुसरण से, पोत परिवहन, सड़क-परिवहन और राजमार्ग मंत्रालय का पोत

परिवहन विभाग (मुख्यालय), एतद्वारा, निम्नलिखित अधिकारियों को नामांकित करता है :-

(i) श्री पी. सी. धीपन के स्थान पर श्री राजीव गुप्ता, संयुक्त सचिव (पोत परिवहन) (दूरभाष सं-23710189) (कमरा सं. 406) परिवहन भवन, नई दिल्ली- 110001 को अंतर्देशीय जल परिवहन और पोत निर्माण तथा पोत मरम्मत सहित पोत परिवहन स्वयं से संबंधित सभी मामलों के संबंध में अपील अधिकारी के रूप में।

(ii) श्री अजय कुमार पाला के स्थान पर श्री रमेश श्रीवास्तव, संयुक्त सचिव (पत्तन/प्रशासन) (दूरभाष सं-23711873) (कमरा सं. 411) परिवहन भवन, नई दिल्ली-110001 को पोत परिवहन विभाग के मुख्यालय के अधिकारियों और कर्मचारियों के प्रशासनिक पहलुओं से संबंधित सभी मामलों और महापत्तन न्यासों, अंडमान लक्षद्वीप बंदरगाह-निर्माण कार्य और महापत्तन प्रशुल्क प्रधिकरण से संबंधित सभी मामलों के संबंध में अपील अधिकारी के रूप में।

[फा. सं. 1-35019/3/2006-सूचना का अधिकार]

सुभाष चन्द, ज्वर सचिव

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS

(Department of Shipping)

(Establishment-II Section)

New Delhi, the 21st June, 2007

S.O. 2139.—In Partial modification of S.O. 1443(E) dated 30th September, 2005, 1st September, 2006 issued under P. No. II-11020/2/2005-Estt. and T. 35019/3/2006-RTI respectively and in pursuance of Sub-Section (1) of Section 19 of the Right to Information Act, 2005 (22 of 2005) read with Section 22 of the General Clauses Act, 1897 (30 of 1897), the Department of Shipping (Headquarters), Ministry of Shipping, Road Transport & Highways hereby designates :

(i) Shri Rajeev Gupta, Joint Secretary (Shipping) (Tel No. 23710189) (Room No. 406), Transport Bhavan, New Delhi-110001 as Appellate Authority (AA) for all matters concerning Shipping Wing including Inland Water Transport (IWT) and Ship Building and Ship Repair in place of Shri P. C. Dhinan.

(ii) Shri Rakesh Srivastava, Joint Secretary (Admn. & Ports) (Tel No. 23711873) (Room No. 411),

Transport Bhavan, New Delhi-110001 as Appellate Authority (AA) for all matters concerning Administrative aspects of the Officers and Staff of the Headquarters of the Department of Shipping and all matters concerning Major Ports and Andaman Lakshadweep Harbour Works (ALHW), Tariff Authority for Major Ports (TAMP) in place of Shri A. K. Bhalta.

[F.No. I-35019/3/2006-RTI]

SUBHASH CHAND, Under Secy.

ज्वर सचिव

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2130.—केंद्रीय रेशम बोर्ड अधिनियम, 1948 (1948 का 61) की धारा 4 की उप-धारा (3) प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार, एतद्वारा उक्त अधिनियम के प्रावधानों के अधधीन इस अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए केंद्रीय रेशम बोर्ड के सदस्य के रूप में कार्य करने के लिए निम्नलिखित व्यक्ति का नामांकन अधिसूचित करता है।

श्री चितारेड्डी श्रीनिवास रेड्डी, उपर्युक्त अधिनियम की धारा गांव बादकरपल्ली, 4(3)(जे) के अंतर्गत केंद्र मिर्यागुडा मंडल, सरकार द्वारा नामित जिला-नलगोंडा (आंध्र प्रदेश)

[फा. सं. 25012/56/99-रेशम]

भूपेन्द्र सिंह, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 30th July, 2007

S.O. 2130.—In exercise of the powers conferred by sub-section (3) of Section 4 of the Central Silk Board Act, 1948, the Central Government hereby notifies the nomination of the following person to serve as member of the Central Silk Board for a period of three years from the date of this notification subject to the provisions of the said Act.

श्री च. श्रीनिवास रेड्डी, Nominated by the Yedgarbally village Central Government Miryalguda Mandal, under Section 4(3)(j) of Nalgonda District (AP) the Act.

[F.No. 25012/56/99-Silk]

BHUPENDRA SINGH, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2131.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम (5) के उप-नियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिमूचित करता है कि निम्न विवरण वाले लाइसेन्सों को उनके आगे दर्शायी गई तारीख से रद्द कर दिया गया है :—

अनुसूची

| क्रम सं. | लाइसेंस नं. | लाइसेन्सधारी का नाम व पता | लाइसेन्स के अंतर्गत वस्तु/प्रक्रम से संबंधित भारतीय मानक का शीर्षक व संबंधित भा. मा. | रद्द करने की तिथि |
|-----------|-------------|---|--|-------------------|
| जून, 2007 | | | | |
| 01. | 8719493 | मैक्स प्रो. आर. रोलिंग मिल्स (प्रा.) लि., प्लॉट नं. एस-707, रोड नं. 6, वि. औ. क्षेत्र, जयपुर-302 013 (राजस्थान) | IS 8500 : 1991 स्ट्रक्चरल स्टील | 21-06-2007 |
| 02. | 8793711 | मैक्स प्रो अगर्सेन इण्डस्ट्रीज, ई-293 (ए), रोड नं. 14 वि. औ. क्षेत्र, जयपुर-302 013 (राजस्थान) | IS 398 (भाग 2) : 1996 ए सी एस अग्र | 08-06-2007 |

[सं. सीएमई/13/13]

ए. के. तलवार, उप महानिदेशक (मुहर)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 23rd July, 2007

S. O. 2131—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulation, 1988, the Bureau of Indian Standards, hereby notifies that the licence (s) particulars of which is/are given below has/have been Cancelled with effect from the date indicated:

SCHEDULE

| Sl. No. | Licence No. (CML) | Name and Address of the Licensee | Article/Process with relevant Indian Standards covered by the licence cancelled | Date of Cancellation |
|------------|----------------------|---|---|----------------------|
| June, 2007 | | | | |
| 01. | 8719493 | M/s. P. R. Rolling Mills (Pvt.) Limited Plot No. S-707, Road No.-6, Vishwakarma Industrial Area Jaipur-302 013 (Rajasthan) | IS 8500: 1991 Structural Steel | 21-06-2007 |
| 02. | 8793711 | M/s. Shree Agarsen Industries E-293 (A), Road No. 14 Vishwakarma Industrial Area, Jaipur-302 013 (Rajasthan) | IS 398 (Part 2) : 1996 ACSR | 8-6-2007 |

[No. CMD/13/13]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2132.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

| क्रम सं. | लाइसेंस संख्या | स्वीकृत करने की तिथि/वर्ष/मह. | लाइसेंसधारि का नाम व पता | भारतीय मानक का संदर्भ | मा.मा. संख्या | भाग | अनुभाग | वर्ष |
|----------|----------------|-------------------------------|--|--|---------------|-----|--------|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1. | 7745893 | 29-05-2007 | कोठारी इंडस्ट्रीज (पुनिट-2), प्लॉट नं. 123, 124 और 125, चंद्रमौली को-ऑपरेटिव इस्टेट लिमिटेड, मोहोल जिला-सोलापुर-413212 | सोखेब के लिए उच्च घनत्व के पॉलिथिलीन पाइप्स | 14333 | | | 1996 |
| 2. | 7747190 | 01-06-2007 | धनलक्ष्मी री-रोलिंग मिल्स, डी-57, स्टीरलस, एमआईसीसी, जालना-431203 | कांक्रिट री-इन्फोर्समेंट के लिए उच्च शक्ति की डीकार्बेड स्टील की तारें व छड़ें | 1796 | | | 1985 |
| 3. | 7747089 | 01-06-2007 | सुकनराज एस. परमार, 624, गणेश पेठ, गोविंद हल्वाई चौक, पुणे-411002, | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 4. | 7737389 | 06-06-2007 | किशोर अश्विना फूड्स, प्लॉट नं. 81/एबी, लोनावाला इंडस्ट्रियल इस्टेट, बांगरगांव, लोनावाला, जालुका-भावल, जिला-पुणे-410401 | पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा) | 14543 | | | 2004 |
| 5. | 7748394 | 06-06-2007 | चुनीलाल लधाजी एंड संस, 546, सेंटर स्ट्रीट, कौशल पैलेस कंप, पुणे-411001 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 6. | 7748903 | 01-06-2007 | बाबाजी इंडस्ट्रीज, गट संख्या 94, सखनवाड़ी, कोरेवा, जालुका-ठाडकंगले जिला-कोल्हापुर-416005 | पेयजल आपूर्ति के लिए अनप्लास्टिसाइज्ड पीवीसी पाइप्स | 4985 | | | 2000 |
| 7. | 7749501 | 07-06-2007 | पायोनियर पॉलिमर्स, 139, चंद्रमौली को-ऑपरेटिव इंडस्ट्रियल इस्टेट, मोहोल-जिला-सोलापुर-413213 | पेयजल आपूर्ति के लिए उच्च घनत्व के पॉलिथिलीन पाइप्स | 4984 | | | 1995 |
| 8. | 7753791 | 19-06-2007 | रामचंद्र त्रिंभक देशमुख, 447, चौपाटी फाटंवा, अहमदनगर-414001, | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |

[सं. सीएमडी/13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 23rd July, 2007

S. O. 3132.—In pursuance of Sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1986, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

| Sl. No. | Licence No. | Grant Date | Name & Address of the Party | Title of the Standard | IS No. | Part | Section | Year |
|---------|-------------|------------|--|--|--------|------|---------|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1. | 77458903 | 29-5-2007 | Kothari Industries (Unit-D) Plot No. 123, 124 & 125, Chandramauli Co-op Hdl. Estate Ltd., Mohol, District Solapur-413212 | High density Polyethylene pipes for sewerage | 13335 | | | 1996 |
| 2. | 7747490 | 1-6-2007 | Dhanrajyoti Rolling Mills, D-57, Adf MIDC, Jalna-431203 | High strength deformed steel bars and wires for concrete reinforcement | 1586 | | | 1985 |
| 3. | 7747089 | 1-6-2007 | Sukanraj S. Parmar, 624, Ganesh Path, Goyind Hariwal Chowk, Pune-411002 | Gold and gold alloys, jewellery/artefacts, Fineness and marking | 1417 | | | 1999 |
| 4. | 7737389 | 6-6-2007 | Kishor Aqua Foods, Shed No. 81/AB, Lonavla Industrial Estate, Nangargaon, Lonavla, Taluka-Maval, District-Pune-410401 | Packaged drinking water (Other than packaged natural mineral water) | 14543 | | | 2001 |
| 5. | 7748394 | 6-6-2007 | Chandilal Ladhaji & Sons, 546, Centre Street Kushai Palace, Camp, Pune-411001 | Gold and gold alloys, jewellery/artefacts, Fineness and marking | 1417 | | | 1999 |
| 6. | 7748913 | 1-6-2007 | Indraj Industries, Gat No. 99, Chawanwadi, Kothachi, Taluka-Hatkanangale, District-Kolhapur-416005 | Unplasticized PVC Pipes for Potable Water Supplies | 1985 | | | 2005 |
| 7. | 7749501 | 7-6-2007 | Pioneer Polymers, 139, Chandramauli Co-Op Hdl Estate, Mohol, District-Solapur-413213 | High density polyethylene pipes for potable water supplies | 4984 | | | 1995 |
| 8. | 7757591 | 19-6-2007 | Ramchandra Trimbak De-shmukh, 447, Chowpatti Karnaj, Ahmednagar-414001 | Gold and gold alloys, jewellery/artefacts, Fineness and marking | 1417 | | | 1999 |

[No. CBM/13/11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2133.— भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम (4) के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो अधिसूचित करता है कि जिन लाइसेन्सों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिये गए हैं :

अनुसूची

| क्रम सं. | लाइसेंस सं. | व्यक्त तिथि | लाइसेंसधारी का नाम व पता | भारतीय मानक का शीर्षक व संबंधित भारतीय मानक |
|----------|-------------|-------------|--|--|
| 1 | 2 | 3 | 4 | 5 |
| | जून 2007 | | | |
| 1. | 88348881 | 05-06-2007 | मैसर्स श्री गम कंवेल्स प्रा. लि., ए-524, रोको औद्योगिक क्षेत्र, चौपांकी, मिवाड़ी-301 019, जिला-अलवर (राजस्थान) | 694 : 1990 पीवीसी इन्सुलेटेड कंवेल्स |
| 2. | 8831487 | 12-05-2007 | मैसर्स श्री प्रणव कृपा इलेक्ट्रिक प्रा. लि., मघ 14249, फेज 3, सीतापुरा औद्योगिक क्षेत्र, जयपुर (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी कंवेल्स |
| 3. | 8831692 | 12-06-2007 | मैसर्स भिवाड़ी मिलिण्डर्स प्रा. लि., ई-625, 1200 एवं 1201, औ. क्षेत्र, भिवाड़ी-301 019, जिला-अलवर (राजस्थान) | 3196 (भाग 2) : 1992 मिलिण्डर्स फॉर लिफ्टिंग/वॉल गैमिंग अवर देन एलपीजे |
| 4. | 8831689 | 11-06-2007 | मैसर्स आदिनाथ पॉवर कंट्रोल कंवेल्स प्रा. लि., एफ-671, रोको औद्योगिक क्षेत्र, सीतापुरा, जयपुर (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी कंवेल्स |
| 5. | 8831790 | 11-06-2007 | मैसर्स आदिनाथ पॉवर कंट्रोल कंवेल्स प्रा. लि., एफ-671, रोको औद्योगिक क्षेत्र, सीतापुरा, जयपुर (राजस्थान) | 1554 (भाग 1) : 1988 पीवीसी इन्सुलेटेड (एचडी) कंवेल्स |
| 6. | 8832792 | 13-06-2007 | मैसर्स नीमकण्ठ वैल्व प्रा. लि., बी-947, रोको औद्योगिक क्षेत्र, फेज 3, मिवाड़ी, जिला-अलवर (राजस्थान) | 447 : 1988 रबड जोड फॉर वैल्विंग |
| 7. | 8827997 | 29-05-2007 | मैसर्स ओम इन्टरनेशनल, एफ-31, रोको औद्योगिक क्षेत्र, गंगल, अजमेर-305 001 (राजस्थान) | 14543 : 2004 वातलबन्ध पॉने का पानी |
| 8. | 8827496 | 29-05-2007 | मैसर्स एडवान्स माइक्रो फर्टिलाइजर्स प्रा. लि., ई-39, रोको औद्योगिक क्षेत्र, बगरु (विस्तार), बगरु, जिला-जयपुर (राजस्थान) | 8940 : 1978 मिथाईल पैराथियान डोपो |
| 9. | 8828906 | 04-06-2007 | मैसर्स श्री वर्धमान पॉवर प्रा. लि., ओ 849, रोड नं. 14, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी कंवेल्स |
| 10. | 8831588 | 12-06-2007 | मैसर्स प्रारुति पोलोमर्स, एफ-8 एवं 9, औद्योगिक क्षेत्र, मधाविबा, जयपुर-342 005 (राजस्थान) | 4984 : 1995 एचडीपीई पाइप |

| 1 | 2 | 3 | 4 | 5 |
|-----|---------|------------|--|---|
| 11. | 8830182 | 07-06-2007 | मैसर्स राजस्थान ट्रांसफार्मर्स एण्ड स्विचगियर, (आरटीएस पॉवर कार्पो. लि. की इकाई), सी-174, रोड नं. 9(जे), विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 1554 (भाग 1) : 1988 पीवीसी इन्सुलेटेड (एचडी) कंक्टस |
| 12. | 8830384 | 07-06-2007 | मैसर्स राजस्थान ट्रांसफार्मर्स एण्ड स्विचगियर, (आरटीएस पॉवर कार्पो. लि. की इकाई), सी-174, रोड नं. 9(जे), विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 7098 (भाग 1) : 1988 इन्सुलेटेड पीवीसी कंक्टस |
| 13. | 8832388 | 11-06-2007 | मैसर्स खोवाल सबमॉर्सबल वेलॉर पम्पस, 22, श्याम कॉलनी विस्तार, 22 गोदाम, जयपुर (राजस्थान) | 8042 : 2002 सबमॉर्सबल पम्प सेट |
| 14. | 8829605 | 05-06-2007 | मैसर्स राजस्थान इंजीनियर्स एण्ड कंस्ट्रक्टर्स एण्डरपाईजेज, एफ-45, औद्योगिक क्षेत्र, सोनार (राजस्थान) | 4984 : 1995 एचडीपीई पाइप |
| 15. | 8829904 | 05-06-2007 | मैसर्स राज लक्ष्मी पोलोयर्स, एफ-107, मण्डार औद्योगिक क्षेत्र, जोधपुर-342 303 (राजस्थान) | 14151 (भाग 2) : 1999 क्यूसीपीई पाइप |
| 16. | 8835188 | 14-06-2007 | मैसर्स ब्लैंड (इंजिनियर्स), एफ 943, रोड नं. 14 विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 4984 : 1995 एचडीपीई पाइप |
| 17. | 8835087 | 14-06-2007 | मैसर्स प्रेम इण्डस्ट्रीज, ई-354, रोड नं. 14 जे, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 8055 : 2002 सबमॉर्सबल पम्प सेट |
| 18. | 8834089 | 18-06-2007 | मैसर्स जी. सी. कंक्टस एच 1 374, सीतापुरा औद्योगिक क्षेत्र, जयपुर (राजस्थान) | 604 : 1990 पीवीसी इन्सुलेटेड कंक्टस |
| 19. | 8834190 | 18-06-2007 | मैसर्स विजय कंक्टस एच-373, सीतापुरा औद्योगिक क्षेत्र, जयपुर (राजस्थान) | 604 : 1990 पीवीसी इन्सुलेटेड कंक्टस |
| 20. | 8834594 | 19-06-2007 | मैसर्स सुनील ज्वैलर्स, 10, गंगा माता की गली, गोपाल जी क. रायदा, जयपुर-302 001 (राजस्थान) | 1417 : 1999 सुरक्षाभूषणों की हलफार्किंग |
| 21. | 8834695 | 19-06-2007 | मैसर्स आराम स्टाईलन्स प्रा. लि., जी-132, रॉक रोड, सीतापुरा औद्योगिक क्षेत्र, जयपुर-302 032 (राजस्थान) | 13487 : 1992 इंग्रेशन इन्वियमेंट स्पीटर |
| 22. | 8835701 | 21-06-2007 | मैसर्स नांगलखाला इन्वेंकस (प्रा.) लि., एफ-152 एम.आई.ए., अलवर-301 030 (राजस्थान) | 9968 (भाग 2) : 2002 इन्स्टॉन्ग इन्सुलेटेड कंक्टस |

| 1 | 2 | 3 | 4 | 5 |
|-----|---------|------------|---|---|
| 23. | 8835802 | 21-06-2007 | मैसर्स पाईन लैमिनेट्स प्रा. लि., ए-526 ए, रीको औद्योगिक क्षेत्र, चौपांकी, भिवाड़ी, जिला अलवर (राजस्थान) | 4990 : 1993 कांक्रिट शटरिंग प्लास्त्रबुड |
| 24. | 8836093 | 21-06-2007 | मैसर्स नवरत्न पाईप एण्ड प्रोफाइल लि. एसपी-6, रीको औद्योगिक क्षेत्र, छुशखेडा, जिला अलवर (राजस्थान) | 4270 : 2001 स्टील ट्यूब फॉर स्ट्रक्चरल परपज |
| 25. | 8836788 | 08-06-2007 | मैसर्स वैकटेश इरीगेशन सिस्टम्स प्रा. लि., जी-1-28, एचएमटी रीको औद्योगिक क्षेत्र, ब्यावर रोड, अजमेर- 305 001 (राजस्थान) | 13487 : 1992 इरीगेशन इक्विपमेंट- एमोटर |
| 26. | 8836902 | 29-05-2007 | मैसर्स केशव इलेक्ट्रिकल्स (प्रा.) लि., जी 1-63, रीको औद्योगिक क्षेत्र, कालादेश, बयपुर (राजस्थान) | 14255 : 1995 एरियल कन्ड कंडलस |
| 27. | 8836801 | 30-05-2007 | मैसर्स जे. के. काइट सीमेंट वर्क्स पो. ऑ. गोटन-342 902 जिला नागौर (राजस्थान) | 8112 : 1989 43 ग्रेड ओपोसी |
| 28. | 8827193 | 29-05-2007 | मैसर्स सारुण्डा लैम्स प्रा. लि., बोकानेर रोड, बोकानेर, नोखा जिला-बोकानेर (राजस्थान) | 418 : 2004 जोएलएस लैम्स |
| 29. | 8827092 | 30-05-2007 | मैसर्स जे. के. सीमेंट वर्क्स, पो. ऑ. गोटन-342 902 जिला नागौर (राजस्थान) | 1489 (भाग I) : 1991 पोर्टलैंड पोबोलाना सीमेंट |

[सं. सीएमडी/13 : 11]

ए. के. तलवार, उप महानिदेशक (पुडर)

New Delhi, the 23rd July, 2007

S. O. 2133.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulation, 1988, the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following Schedules:—

SCHEDULE

| Sl. No. | Licence No. (CML-) | Operative Date | Name and address of the Licensee | Articles/Process covered by the licences and the relevant IS : Designation |
|------------------|-----------------------|----------------|--|--|
| 1 | 2 | 3 | 4 | 5 |
| June 2007 | | | | |
| 01. | 8830081 | 05-06-2007 | M/s. Sri Ram Cables Pvt. Ltd. A-524, RUICO Industrial Area Chopanki, Bhiwadi Distt. Alwar-301019 Rajasthan | 694:1990 PVC Insulated Cables |

| 1 | 2 | 3 | 4 | 5 |
|----|---------|-----------|---|---|
| 2 | 8831487 | 12-6-2007 | M/s. Shree Shyam Kripa Electric (Pvt. Ltd.), 11-1144), Phase-III Sitapura Industrial Area, Jaipur Rajasthan | 7098(Part 1): 1988 XLPE Insulated PVC Cables |
| 3 | 8831992 | 12-6-2007 | M/s. Bhiwadi Cylinders Pvt. Ltd. E-925, 1200 & 1201 Industrial Area Bhiwadi-301019 Distr. Alwar Rajasthan | 3196(Part 2): 1992 Cylinders for Liquefiable Gases other than LPG |
| 4 | 8831689 | 11-6-2007 | M/s. Adinath Power Control Cables (P) Ltd., F-671, RICO Industrial Area Sitapura, Jaipur (Rajasthan) | 7098(Part 1): 1988 XLPE Insulated PVC Cables |
| 5 | 8831790 | 11-6-2007 | M/s. Adinath Power Control Cables (P) Ltd., F-671, RICO Industrial Area Sitapura, Jaipur (Rajasthan) | 1554(Part 1): 1988 PVC Insulated (HD) Cables |
| 6 | 8832792 | 13-6-2007 | M/s. Neelkanth Weld Pvt. Ltd. G-947, RICO Industrial Area Phase-III, Bhiwadi Distt. Alwar, Rajasthan | 447: 1988 Rubber Hose for welding |
| 7 | 8837597 | 29-5-2007 | M/s. Om International F-31, RICO Industrial Area Gegal, Ajmer—305001 Rajasthan | 1454: 2004 Packaged Drinking Water |
| 8 | 8837496 | 29-5-2007 | M/s. Advance Micro Fertilizers Pvt. Ltd., E-39, RICO Industrial Area Bagru [Extension], Bagru Distt. Jaipur, Rajasthan | 8064: 1978 Methyl Parathion 2% DP |
| 9 | 8838906 | 4-6-2007 | M/s. Shree Vardhman Power Pvt Ltd., G-849, Road No. 14 V.K.I. Area, Jaipur-302013 Rajasthan | 7098(Part 1): 1988 XLPE Insulated PVC Cables |
| 10 | 8831534 | 12-6-2007 | M/s. Maruti Polymers F-889, Industrial Area Mathania, Jodhpur-342005 Rajasthan | 4064: 1995 HDPE Pipes |
| 11 | 8830182 | 7-6-2007 | M/s. Rajasthan Transformers & Switchgear (A unit of RTS Power Corporation Ltd.), C-174, Road No. 90 V.K.I. Area, Jaipur-302013 Rajasthan | 1554(Part 1): 1988 PVC Insulated (HD) Cables |

| 1 | 2 | 3 | 4 | 5 |
|----|---------|-----------|--|--|
| 12 | 8830384 | 7-6-2007 | M/s. Rajasthan Transformers & Switchgear (A Unit of RTS Power Corporation Ltd., C-174, Road No. 9(I) V.K.I. Area, Jaipur-302013 Rajasthan. | 7098 (Part 1):1988 XLPE Insulated PVC Cables |
| 13 | 8832388 | 11-6-2007 | M/s. Khawal Submersible Valour Pumps, 22, Sharma Colony Ext., 22, Godam, Jaipur, (Rajasthan). | 8034:2002 Submersible Pumpsets |
| 14 | 8829605 | 5-6-2007 | M/s. Rajasthan Engineers & Contractors Enterprises, F-45, Industrial Area Sikar (Rajasthan). | 4984:1995 HDPE Pipes |
| 15 | 8829504 | 5-6-2007 | M/s. Raj Laxmi Polymers F-107, Mander Industrial Area, Jodhpur-342304 (Rajasthan). | 14151 (Part 2):1999 QCPE Pipes |
| 16 | 8833188 | 14-6-2007 | M/s. Blade (India) F-943, Road No. 14, V.K.I. Area Jaipur-302013, Rajasthan. | 4984:1995 HDPE Pipes |
| 17 | 8833087 | 14-6-2007 | M/s. Prem Industries E-354, Road No. 14-I, V.K.I. Area, Jaipur-302013, Rajasthan. | 8034:2002 Submersible Pumpsets |
| 18 | 8834089 | 18-6-2007 | M/s. G.C. Cables HI-374, Sitapura Industrial Area, Jaipur, Rajasthan. | 694:1990 PVC Insulated Cables |
| 19 | 8834190 | 18-6-2007 | M/s. Vijay Cables H-373, Sitapura Industrial Area, Jaipur, Rajasthan. | 694:1990 PVC Insulated Cables |
| 20 | 8834954 | 19-6-2007 | M/s. Sunil Jewellers 10, Oanga Mata Ki Gali, Gopal ji ka Rasta, Jaipur-302003 Rajasthan. | 1417:1999 Hallmarking of Gold Jewellery |
| 21 | 8834695 | 19-6-2007 | M/s. Aaram Plastics Private Limited G-232, Tonk Road, Sitapura, Industrial Area, Jaipur-302022 Rajasthan. | 13484:1992 Irrigation Equipment Fitters |
| 22 | 8835706 | 21-6-2007 | M/s. Nangulwala Inpex (P) Ltd., F-152, M.I.A. Alwar-301009 Rajasthan. | 9968 (Part 2):2002 Elastomer Insulated Cables |

| 1 | 2 | 3 | 4 | 5 |
|-----|---------|-----------|---|---|
| 23. | 8325802 | 21-6-2007 | M/s. Pine Laminates Pvt. Ltd., A-526 A, RICO Industrial Area, Chopanki, Bhiwadi, Distt. Alwar, Rajasthan. | 4990/1993 Concrete Shuttering Plywood |
| 24. | 8326099 | 21-6-2007 | M/s. Navratan Pipe & Profile Limited SP-6, RICO Industrial Area, Khushkhara Alwar, Rajasthan. | 4270/2001 Steel Tubes for Structural Purposes |
| 25. | 8320768 | 8-6-2007 | M/s. Vanktesh Irrigation Systems Pvt. Ltd., G-1-28, HMT RICO Indl. Area Bagwar Road, Ajmer-305001 Rajasthan. | 13487/1992 Irrigation Equipment Extruders |
| 26. | 8326902 | 29-5-2007 | M/s. Keshav Electricals (P) Ltd., GL-63, RICO Industrial Area, Kaladera, Jaipur, Rajasthan. | 14255/1995 Aerial Bunched Cables |
| 27. | 8326801 | 30-5-2007 | M/s. J.K. White Cement Works P.O. Gotan-342902 Distt. Nagaur, Rajasthan. | 8112/1989 43 Grade OPC |
| 28. | 8327193 | 29-5-2007 | M/s. Sarunda Lamps Private Limited, Bikaner Road, Bikasur, Nokha Distt. Bikaner, Rajasthan | 418/2004 GLS Lamps |
| 29. | 8327032 | 30-5-2007 | M/s. J.K. Cement Works P.O. Gotan, Distt. Nagaur-342902 Rajasthan. | 1489 (Part 1)/1991 Portland Pozzolana Cement |

[No. CMD/13.11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 24 जुलाई, 2007

अ.आ. 2134.-भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (को) में संशोधन किया गया/किये गये हैं:-

अनुसूची

| क्रम संख्या | संशोधित भारतीय मानक(को) की संख्या वर्ष और शीर्षक | संशोधन की संख्या और तिथि | संशोधन लागू होने की तिथि |
|-------------|--|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 |
| | आईएस 10918:1984 की संशोधन संख्या 1 | 1 जुलाई, 2007 | 31 जुलाई, 2007 |

इस भारतीय संशोधन को प्रतियोगी भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, जयपुर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईसी 11/डी-15]

पी. के. मुखर्जी, वैज्ञानिक एक एवं प्रमुख (विद्युत तकनीक)

New Delhi, the 24th July, 2007

S. O. 2134,—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards | No. and Year of the Amendment | Date from which the Amendment shall have effect |
|---------|---|-------------------------------|---|
| (1) | (2) | (3) | (4) |
| 1. | IS 10918 : 1984, Specification for vented type nickel cadmium batteries | 1, July 2007 | 31st July, 2007 |

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zadar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

(Ref.: ET 11/I-35)

P. K. MUKHERJEE, Sc. F & Head (Electrotechnical)

नई दिल्ली, 27 जुलाई, 2007

क्रा.आ. 2135.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्नके विवरण नीचे अनुसूची में दिये गये हैं को लॉइसेंस प्रदान किए गए हैं :-

अनुसूची

| क्रम सं. | लाइसेंस संख्या | वैधता तिथि | पार्टी का नाम एवं पता (कारखाना) | उत्पाद | आइ एस सं./भाग/खण्ड तथै |
|-------------|-------------------|------------|---|--|------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | 7749194 | 5-6-2008 | जे एन इंडस्ट्रीज, 16/डी अन्वर इंडस्ट्रियल क्लस्टर असोसिएशन, मुकादम कंपार्टमेंट के पास, फिल्म सिटी रोड, गोकुलधाम, मालाड (पूर्व), मुंबई-400097 | पीवीसी रोहित (टैबोइयूटी) विद्युत केबल भाग 1 1100 वोल्ट तक कार्यकारी वोल्टता के लिए | 1554 : भाग 1 : 1988 |
| 2 | 7750280 | 4-6-2008 | विकास कोबल्स, शर्मे स. 112/2ए, एस्मर पेट्रोल पंप के पीछे, कल्याण मुरबाड रोड, कांढगाँव, कल्याण, जिला धाने-421301 | पीवीसी रोहित (टैबोइयूटी) विद्युत केबल भाग 1 1100 वोल्ट तक कार्यकारी वोल्टता के लिए | 1554 : भाग-1 : 1988 |
| 3 | 7753593 | 21-6-2008 | टेक्नोफ्लेक्स कोबल्स, इ/1, सिंगटे कंपार्टमेंट, कोकनोपाडा, दक्षिण (पूर्व), मुंबई 400068 | पीवीसी रोहित (टैबोइयूटी) विद्युत केबल भाग 1 1100 वोल्ट तक कार्यकारी वोल्टता के लिए | 1554 : भाग 1 : 1988 |

| 1 | 2 | 3 | 4 | 5 | 6 |
|----|---------|-----------|---|---|-----------------------------------|
| 4 | 7750078 | 10-6-2008 | लोटस कमर्स और कंवेल्स, 41/3, सिल्वर इंडस्ट्रियल इस्टेट के पीछे, पतलिया रोड, भिमणेर, प्लॉट सं. 1, नानी दमण, दमण और दीव 396 210 | ए लो स्थैतिक ट्रैफिकार्क योशित वाट भंटे एवं ए आर- घंट मोटर, वर्ग 0.2 एम तथा 0.5 एम | 14697 : 1999 |
| 5 | 7754288 | 25-6-2008 | कल्की इंडस्ट्रीज, कल्की इस्टेट, ईश्वरमाई पटेल रोड, गडगेगाव (पश्चिम), मुंबई 400063 | सिलिंग रोडिंग | 271 : 1999 |
| 6 | 7756090 | 27-6-2008 | एस अर इंडस्ट्रीज संख्या 54, दूसरा माला, आदित्य इंडस्ट्रियल इस्टेट, चिंचोली बंदर रोड, मालाड (पश्चिम), मुंबई 400 064 | 250 बॉल्ट तक की रेटित बॉल्टना वाले और 16 एम्पियर तक की रेटित करंट वाले प्लग और साजंट निकास | 1293 : 1988 |
| 7 | 7749497 | 6-6-2008 | नविन इंडस्ट्रीज, बैरक सं. 1965 के पीछे, ओ. टी. सेक्शन, उल्हासनगर, थाने 421 005 | पॉलीथी रॉधित (चैवीड्यूटी) निरुत कंबल भाग 1 1100 बॉल्ट तक कार्यकारी बोरल्ल के लिए | 1554 : भाग 1 : 1988 |
| 8 | 7755997 | 27-6-2008 | एपल इन्सुलेटेड वायर प्राइवेट लिमिटेड, सर्वे सं. 219/2/3, दादरा चेक पोस्ट के पास, दादरा नगर हवेली, दादरा 396 230 | निमज्जन माटरों के वाइडिंग तर भाग 4 अलग-अलग तरों की विशिष्ट अनुभाग 3 पालिपेस्टर और पालिप्रालोलीन रॉधित वाइडिंग तर | 8783 : भाग-4 : अनुभाग-3 : 1995 |
| 9 | 7750381 | 4-6-2008 | विकास कंवेल्स, सर्वे सं. 112/2, एस्सार् पैट्रोल पंप के पीछे, कल्याण मुख्याड रोड, कांबगाव, कल्याण, बिला थाने-421 301 | अनुप्रस्थ जुड़ें हुए पॉलीइथिलीन निरुतरोधी पी वी सी आवरित कंबल (भाग 1) 1100 बॉल्ट और सहित की कार्यकारी बोल्टता के लिए | 7098 : भाग 1 : 1988 |
| 10 | 7749295 | 5-6-2008 | राहुल होम अप्लाइसेस, फगावाला कंपाउंड, महाराष्ट्र नगर, मांड्रुप (पश्चिम), मुंबई 400 078 | बिजली के घरेलू खाद्य भिक्षा (इवोपरक और ग्राइंडर) | 6250 : 1980 |

[सं. केन्द्रीय प्रमाणन विभाग: 13 : 113]

ए. के. उलवार, डप मद्रानिदेशक (प्रमाणन)

New Delhi, the 27th July, 2007

S. O. 2135.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :

SCHEDULE

| Sl. No. | Licence No. | Validity Date | Name and Address (factory) of the Party | Product | IS No./Part/Sec Year |
|---------|-------------|---------------|--|---|----------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | 7749194 | 05-6-2008 | J.N. Industries 16/D, Anwar INDL. Welfare Association, NR, Mukadam Comp., Film City Road, Gokuldham, Malad (E), Mumbai-400097 | PVC insulated (heavy duty) electric cables : Part I for working voltages upto and including 1100V | 1554 : Part I : 1988 |
| 2 | 7750280 | 04-6-2008 | Vikas Cables Survey No. 112/2, Behind Essar Petrol Pump, Kalyan-Murbad Road, Kambagaon, Kalyan Dist. Thane-421301 | PVC insulated (heavy duty) electric cables : Part I for working voltages upto and including 1100V | 1554 : Part I : 1988 |
| 3 | 7753993 | 21-6-2008 | Technoflex Cables F/1, Shinghte Compound, Koknipada Dahisar (E), Mumbai-400068 | PVC insulated (heavy duty) electric cables : Part I for working voltages upto and including 1100V | 1554 : Part I : 1988 |
| 4 | 7750078 | 10-6-2008 | Lotus Wires & Cables 41/3, Behind Silver Indl. Estate, Patalia Road, Bhimpore, Plot No. 1, Nani Daman Daman & Diu-396210 | AC Static Transformer Operated Warthour and Var-hour Meters, Class 0.2 S and 0.5 S | 14697 : 1999 |
| 5 | 7754288 | 25-6-2008 | Kalki Industries Kalki Estate, Ishwarbhai Patel Rd, Goregaon (W), Mumbai-400063 | Ceiling Roses | 371 : 1999 |
| 6 | 7756090 | 27-6-2008 | S.R. Industries No. 54, Second Floor, Aditya Indl Estate, Chinchol Bunder Road Malad (W), Mumbai-400064 | Plugs and socket outlets of 250 volts and rated current up to 16 amperes | 1293 : 1988 |
| 7 | 7749497 | 06-6-2008 | Navin Industries Behind Bk. No. 1965, O. T. Section, Ulhasnagar Thane-421005 | PVC insulated (heavy duty) electric cables : Part I for working voltages upto and including 1100V | 1554 : Part I : 1988 |

| 1 | 2 | 3 | 4 | 5 | 6 |
|----|---------|-----------|--|--|------------------------------------|
| 8 | 7758997 | 27-6-2008 | Apple Insulated Wire Pvt. Ltd. Survey No. 219/2/3, NR Dadra Check Post, Dadra and Nagar Haveli, Dadar-3962230 | Winding Wires for Submersible Motors- Specification-Part 4 : Specification for Individual Wires- Section 3 : Polyester and polypropylene Insulated Winding Wires | 8783 : Part 4 : Sec 3 : 1995 |
| 9 | 7750381 | 4-6-2008 | Vikas Cables Survey No. 112/2, behind Essar Petrol Pump, Kalyan-Murbad Road, Kambhagaon Kalyan Thane-421001 | Crosslinked Polyethylene insulated PVC sheathed cables : Part 1 for working voltage upto and including 1100V | 70981: Part 1: 1988 |
| 10 | 7740295 | 5-6-2008 | Rahul Home Appliances Fuggawala Compound, Maharashtra Nagar, Bhandup (W), Mumbai-400078 | Domestic Electric Food-Mixers (Liquidizes and Grinders) | 4250 : 1980 |

[No. COMD/13 : 11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 10 जुलाई, 2007

को आ. 2136.- भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उप-विनियम (1) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा नीचे अनुसूची में दिये गये उत्पादों को पुरस्कार शुल्क अभिव्यक्ति करता है:-

अनुसूची

| भारतीय मानक नं. | आ. अं. | वर्ष | उत्पाद | इकाई | न्यूनतम सुरक्षांक | | इकाई | स्लेब 1 एकड़ियां | स्लेब 2 एकड़ियां | | इकाई | प्रमाणन तिथि |
|-----------------------|--------|------|--------|---|---------------------|---------------------|--------|---------------------|---------------------|------|-------|-----------------|
| | | | | | रुपये पैसो पर | सेंटे पैसो पर | रु. | रु. | रु. | रु. | | |
| 01432 | A | 0 | 1986 | सरसों और तेलिया के तेल 1 टन को खलिची | 37500 | 30000 | 16.00 | 2000 | 8.00 | 2000 | 4.00 | 19-06-2007 |
| 14347 | 0 | 0 | 1988 | कृषिक मलाई रहित दूध 1 एम टी. पाउचर | 39200 | 35400 | 130.00 | 300 | 65.00 | 300 | 35.00 | 19-06-2007 |
| 15166 | 0 | 0 | 2002 | प्रीटीलाकोर पायसनीय सांठ 100 लिटर | 43400 | 36900 | 22.00 | 2000 | 0 | 0 | 11.00 | 19-06-2007 |
| 25351 | 0 | 0 | 2003 | नहर के अवसर के लिए परतलद् उल्क घनत्व पौलोइवइमेल (एचडीपीई) का कपड | 55600 | 47300 | 5.00 | बपी | - | - | | 19-06-2007 |

[सं. कंपनि:13:10]

ए. क. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 30th July, 2007

S. O. 2136.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the marking fee for the products given in the Schedule :

SCHEDULE

| IS No | Part | Sec | Year | Product | Units | Minimum Marking Fee | | Units in Slab-1 | Units in Slab-1 | Units Rate in Slab-2 | Units in Slab-2 | Re- marking Date | Effective Date |
|-------|------|-----|------|--|--------------|---------------------|-------------|-----------------|-----------------|----------------------|-----------------|---------------------|----------------|
| | | | | | | Large Scale | Small Scale | | | | | | |
| 1937 | 0 | 0 | 1986 | Mustard & Rape Seed Oil Cake | 1 Tonne | 37500 | 30500 | 16.00 | 2000 | 8.00 | 2000 | 4.00 | 19-06-2007 |
| 14542 | 0 | 0 | 1998 | Partly Skimmed Milk Powder | 1 M.T. | 39200 | 33400 | 130.00 | 300 | 65.00 | 300 | 33.00 | 19-06-2007 |
| 15160 | 0 | 0 | 2002 | Food-grade Emulsifiable Concentrate | 100 Litres | 43400 | 36900 | 22.00 | 2000 | 0 | 0 | 11.00 | 19-06-2007 |
| 1535 | 0 | 0 | 2003 | Laminated High Density Polyethylene (HDPE) Fabric for Canal Lining | 100 Sq. mts. | 55600 | 47300 | 5.00 | All | — | — | — | 19-06-2007 |

(No. CMD/13: F0)

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 30 जुलाई, 2007

क्र.आ. 2137.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उप-विनियम (6) के अनुसार यह भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले रजिस्ट्रारों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

| क्रम संख्या | लाइसेंस संख्या | लाइसेंसधारी का नाम व पता | लाइसेंस के अधीन वस्तु/प्रकार सम्बन्ध भारतीय मानक का संकेत | रद्द/स्थगित करने की तिथि |
|-------------|-----------------|---|---|--------------------------|
| 1 | 2 | 3 | 4 | 5 |
| 1. | सीएम/एल-7471276 | जय स्नेहियम इंडस्ट्रीज, हरिजोध सोसायटी, कोठारिया रिंग रोड, राजकोट, गुजरात 360004 | पैकेज बन्द पेय जल (पैकेज बन्द प्राकृतिक मिनरल जल के अलावा)- विशिष्ट नाम 14543 : 2004 | 2007/05/01 |
| 2. | सीएम/एल-7591286 | ए वन सीमेंट इंडस्ट्रीज, 8-अ राष्ट्रीय राजमार्ग, अमूल साल मिल के सामने, तिमबही, मोरबी, जिला राजकोट, गुजरात 363642 | 43 ग्रेड साधारण पोर्टलैंड सीमेंट नामा 8112 : 1989 | 2007/06/22 |
| 3. | सीएम/एल-0767868 | एक्सेल क्राफ्ट सोलर लि. 6/2 रुवापरी रोड, भावनगर, गुजरात | तकनीकी ग्रेड एन्डोसल्फान की विशिष्ट नामा 4344 : 1978 | 2007/06/13 |
| 4. | सीएम/एल-2224436 | सोलर पैकेजिंग प्र. लि., श्री अमरसिंहजी मिलन कंघडंड, स्टेशन रोड, बांकानेर, जिला : राजकोट, गुजरात 363622 | टाइपराइटर के कृत्री रिबन की विशिष्ट नामा 4174 : 1977 | 2007/05/03 |
| 5. | सीएम/एल-7245166 | अमर ज्योत पोलो कोम प्र. लि., प्लॉट सं. 2222, लोधिको जी आई डी सी, राधे जे ब्रिज, मेटेडा, तालुका : लोधिका, जिला राजकोट, गुजरात 364458 | पेय जल उद्भूति, घल और औद्योगिक अतिस्त्रावी हेतु उच्च घनत्व पॉलीइथाइलीन पाइप नामा 4984 : 1995 | 2007/05/30 |

| 1 | 2 | 3 | 4 | 5 |
|-----|-----------------|---|--|------------|
| 6. | सीएम/एल-7315468 | कम्पनि पोलीमर, 1/4, सम्राट इंडस्ट्रीयल इरिया, वैन सैम की समीप, डॉ विक्रम स्वर्णार्जुन मार्ग, गोंडल रोड, राजकोट गुजरात 360004 | सिंचाई उपस्कर-सिंक्रलर पाईप- विशिष्ट भाग 1 पोलीथीलीन पाईप माना 14151 : भाग : 1999 | 2007/05/30 |
| 7. | सीएम/एल-7318268 | अशोक होम इम्प्लायर्स प्र. लि., अशोक उद्योग भवन-11, तांछी रोड, सावली प्लेट, राजकोट, गुजरात 360004 | इथिल पेट्रोलियम गैसों के साथ प्रयुक्त मरेलु गैस फूट माना 4246 : 2002 | 2007/06/20 |
| 8. | सीएम/एल-7374278 | कृष्ण प्लास्टिकज, गोंडल रोड, मनसभा इंडस्ट्रीज, जयनाराय मार्गलम, राजकोट, गुजरात 360004 | सिंचाई उपस्कर-सिंक्रलर पाईप- विशिष्ट भाग 3 पोलीथीलीन पाईप माना 14151 : भाग : 1999 | 2007/06/18 |
| 9. | सीएम/एल-7414062 | प्रमुख सीमेंट प्र. लि., सर्वे सं. 83/1, गौब अस्पई, तालुका कोटडा संघनी, राजकोट, गुजरात | 43 ग्रेड स्थापण फोर्टलैंड सीमेंट माना 8112 : 1999 | 2007/05/31 |
| 10. | सीएम/एल-7479902 | विशाल सी लि., गौब तालकापया, तालुका मुंद, काष्ठ 370415 | मुंदलिल वेलिडत पाइप माना 5504 : 1997 | 2007/06/04 |
| 11. | सीएम/एल-7467285 | परफेक्ट बेचरेजीज, 14, विद्यामनगर, चित्रा सिंहरा रोड पानी की टंकी के सामने, सावनगर, गुजरात 364001 | पैकेजमन्ड पेय जल (पैकेजमन्ड प्राकृतिक मिक्स्ड जल के अलावा) विशिष्ट माना 14543 : 2004 | 2007/06/27 |

[संख्या सी एम डी-13 : 13]

ए. के. तलवार, उप महानिदेशक (गृह)

New Delhi, the 30th July, 2007

S.O. 2137.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :

| Sl. No. | Licence No. CNL- | Name & Address of the Licensee | Article/Process with Relevant Indian Standards Covered by the Licence | Date of Cancellation/ the Licence Cancelled/ Suspension |
|---------|------------------|--|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 1. | CNL-7471276 | M/s Jay Khodiyar Industries Haripur Society, Kothariya Ring Road, Rajkot-360004, Gujarat 360004 | IS 14543 : 2004 | 2007/05/01 |
| 2. | CNL-7591286 | M/s A-One Cement Industries 8-A, National Highway Opp. Amul Pulse Mill, Timbadi, Morbi, Distt : Rajkot Gujarat 363642 | IS 8112 : 1989 | 2007/06/22 |
| 3. | CNL-0767868 | M/s Excel Crop Care Ltd., 6/2 Ruvapari Road, Bhavnagar, Gujarat 364005 | IS 4344 : 1978 | 2007/06/13 |
| 4. | CNL-2224436 | M/s Solar Packaging Pvt. Ltd. Shri Amarsinhji Mills Compound, Station Road, Wankarner, Distt : Rajkot, Gujarat-363622 | IS 4174 : 1977 | 2007/06/03 |

| 1 | 2 | 3 | 4 | 5 |
|-----------------|---|-------------------------|---|------------|
| 5. CML-7245166 | M/s. Anar Jyoti Poly Chem. Pvt. Ltd. Plot No. 2222, Lodhika GIDC, Opp. Radhe Wey Bridge at Metoda, Tal. Lodhika, Dist: Rajkot, Gujarat-364458 | IS 4984 : 1995 | | 2007/05/30 |
| 6. CML-7315868 | M/s. Khyati Polymers 1/4, Sanrat Industrial Area, Near Ban Lab, Dr. Vikram Sarabhai Marg, Gondal Road, Rajkot, Gujarat-360004 | IS 14151: Part 1 : 1999 | | 2007/05/30 |
| 7. CML-7318268 | M/s. Ashok Home Appliances Pvt. Ltd. Ashok Udyog Bhavan-II, Tanti Road, Mavdi Plot, Rajkot, Gujarat-360004 | IS 4246 : 2002 | | 2007/06/20 |
| 8. CML-7374278 | M/s. Krishna Plastics Gondal Road, Behind Marwata Industries, Opp. Jagdish Marbles, Rajkot, Gujarat-360004 | IS 14151: Part 1 : 1999 | | 2007/06/30 |
| 9. CML-7414062 | M/s. Pramukh Cement Pvt. Ltd. Survey No. 83/1, Village Ardai, Taluka Kotdasgani, Rajkot, Gujarat | IS 8112 : 1989 | | 2007/06/31 |
| 10. CML-7479902 | M/s. Jindal Saw Ltd. Village: Nankapaya, Taluka Mundra, Dist. : Kachchh, Gujarat-370415 | IS 5504 : 1997 | | 2007/06/04 |
| 11. CML-7467285 | M/s. Perfect Beverages, 14, Vishramnagar, Chitra-Sidhar Road, Opp. Water Tank, Bhavnagar, Gujarat-364001 | IS 14543 : 2004 | | 2007/06/27 |

[No. CML/13:13]

A. K. TALWAR, Dy. Director (General) (Marks)

नई दिल्ली, 30 जुलाई, 2007

क्र.अ. 2138.—भारतीय मानक सूची (प्रकाशन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसार मैं भारतीय मानक सूची एकाग्रता अधिसूचना करता हूँ कि निम्नीय विवरण नीचे अनुसूची में दिए गए हैं जो उनके अपने भारतीय नई मानक से यह कर दिया गया है :—

अनुसूची

| क्रम संख्या | एकलपद संख्या | मानकीकृत का नाम एवं पता | एकलपद के अंग्रेजी संकेत/क्रम संख्या भारतीय मानक समिति | यह मानक की तिथि |
|-------------|--------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 |
| 1. | 7330662 | संयोजित काल सेकण्ड सूक्ष्म कैलिब्रेशन कॉन्फ़र्न्स, समरपट्ट रोड, गीताजी (पूर्व), मुंबई-400063 | 2148 : 1981 मिस्कोटी गैस सफ़ाईओं के लिए मिश्रित के उपकरण—ज्वालामय अवस्था | 27-6-2007 |

| 1 | 2 | 3 | 4 | 5 |
|---|---------|--|---|------------|
| 2 | 7026659 | डी. के. इलेक्ट्रिकल्स गाला सं. 1, पहला मंजरा, मनीष इंडस्ट्रीयल इस्टेट सं. 1, नवभार, वसई रोड (पूर्व), मिना मने-401210 | 3854 : 1997 घरेलू और अमान प्रयोजनों के लिए स्विच | 25-06-2007 |
| 3 | 7462881 | कॉमेट इंडस्ट्रीज, शर्मा इंडस्ट्रीयल इस्टेट, गाला सं. 3, उद्योग भवन, बल्लमट रोड, गोरगांव (पूर्व), मुंबई-400 063 | 2148 : 1981 फ्लेमप्रूफ गैस पर्यावरणों के लिए विशेषी के उपकरण—ज्वालासह आवरण | 27-06-2007 |

[सं. केंद्रीय प्रमाणन विभाग/13 : 13]

ए. के. तलवार, उपमहानिदेशक (मुहर)

New Delhi, the 30th July, 2007

S.O. 2138.—In pursuance of sub-regulation (6) of Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each :

SCHEDULE

| Sl. No. | Licence No. | Name and Address of the licensee | Article/Process with relevant Indian Standards covered by the licence cancelled | Date of Cancellation |
|---------|-------------|--|---|----------------------|
| 1 | 2 | 3 | 4 | 5 |
| 1. | 7380662 | Comet Brass Product Nutan Chemical Compound, Walbhat Road, Goregaon (E), Mumbai-400063 | 2148 : 1981 Flameproof enclosures for electrical apparatus | 27-06-2007 |
| 2. | 7026659 | D. K. Electricals Gala No. 1, First Floor, Manish Indl. Estate No. 1, Navghar, Vasai Road (East) Distt. Thane-401210 | 3854 : 1997 Switches for domestic purposes | 25-06-2007 |
| 3. | 7462881 | Comet Industries Sharma Industrial Estate, Gala No. 3, Udhayog Bhavan, Walbhat Road, Goregaon (E), Mumbai-400063 | 2148 : 1981 Flameproof enclosures for electrical apparatus | 27-06-2007 |

[No. CMD/13 : 13]

A. K. TALWAR, Dy. Director General (Marks)

अथ एवं रोजगार यंत्रालय

नई दिल्ली, 9 जुलाई, 2007

का.आ. 2139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार तुंगभद्रा ग्रामीण बैंक के प्रबंधक के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलूर के पंचाट (संदर्भ संख्या 5/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/258/2002-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 9th July, 2007

S.O. 2139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the management of Tungbhadra Gramin Bank and their workman, received by the Central Government on 09-07-2007.

[No. L-12012/258/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 26th June, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

C. R. No. 05/2003

I PARTY

B. Mahadevappa,
S/o Shri Marriappa,
No. MIG 59, KHB Colony,
Gandhi Nagar,
Bellary,
Karnataka State.

II PARTY

The Chairman,
Tungbhadra Gramin Bank,
(Head Office),
Gandhi Nagar,
Bellary,
Karnataka State

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (2A) of

the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/258/2002-IR(B-I) dated 5th February, 2003 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Tungbhadra Gramin Bank imposing the penalty of punishment of removal from services on Shri B. Mahadevappa is legal and justified? If not, what relief the workman is entitled?"

2. A charge sheet dated 17-09-1992, came to be issued against the first party (hereinafter called the workman) by the management on the allegation that he remained unauthorisedly absent from duty from 07-08-1991 to 20-12-1991 and also disobeyed the orders of the management to rejoin duty until 21-12-1991. It was further alleged that he also remained unauthorisedly absent from duty w.e.f. 01-02-1992 to 30-04-1992 and then absented from duty from 13-05-1992 onwards.

3. Another charge sheet dated 16-03-1993 was issued against the workman on the allegation that he remained absent from duty without leave being sanctioned from 15-11-1992 to 29-01-1993 and thereby committed misconducts under Regulation 22 of the Tungbhadra Gramin Bank (Staff) Regulations, 1980.

4. The workman appears to have given replies to both the charge sheets denying the allegations of unauthorised absence and the management not being satisfied with the explanations offered by the workman ordered DE to be conducted in both the charge sheets appointing the enquiry officer with intimation to the workman. He participated in the enquiry proceedings conducted against him on the aforesaid charge sheets separately and on the conclusion of the enquiry proceedings, the enquiry officer submitted his enquiry findings on 20-04-1994 in respect to the first charge sheet and on 21-5-1994 with regard to the subsequent charge sheet holding the workman guilty of the charges of misconduct of unauthorised absence as alleged in both the charge sheets. By a common order dated 24-06-1994 the Disciplinary Authority while forwarding the findings of the enquiry officer to the first party proposed the punishment of removal from service by way of show cause notice calling upon him to furnish his representation within a period of 7 days from the receipt of the order with regard to the findings of the enquiry officer and the penalty proposed. The workman submitted his comments and explanation over the findings of guilt recorded by the enquiry officer as well as by the Disciplinary Authority and on the proposed punishment, the disciplinary authority not being satisfied by the explanation submitted by the first party confirmed the proposed punishment by order dated 17-08-1994. His appeal against the aforesaid order came

to be dismissed by the Appellate Authority's order dated 09-12-1994. It appears that thereafter the first party raised the Industrial Dispute before the Conciliation Officer concerned and that resulted into the present reference proceedings.

5. Keeping in view the contentions of the workman in his Claim Statement and the contentions taken by the management in its counter statement with regard to the validity and fairness or otherwise of the enquiry proceedings, a Preliminary Issue was framed on the said point and parties were called upon to lead evidence. The management examined the enquiry officer (common on both the charge sheets) as MW1 and got marked 14 documents at Ex.M1 to M14. The first party examined himself by way of rebuttal evidence and after having heard the learned counsels for the respective parties this tribunal by order dated 20-10-2005 recorded a finding on the above said issue to the effect that the proceedings of enquiry conducted against the first party (workman) by the Second Party (Management) on the first charge sheet dated 17-9-1992 are not fair and proper and whereas, the proceedings of enquiry held against the first party by the second party on the second charge sheet were fair and proper. Thereupon case came to be posted for evidence of the management to prove the charges of misconduct levelled against the workman on the second charge sheet dated 16-03-1993. The management to substantiate the charges examined one witness as MW2 by filing his affidavit evidence and in his further examination chief got marked 33 documents at Ex. M15 to M47, (which documents were already marked at MEx.1 to 33 during the course of enquiry). Once again, the first party examined himself by filing his affidavit evidence on merits of the case as far as the second charge sheet is concerned.

6. The case of the first party workman as made out in the Claim Statement on merits with respect to both the charge sheets, to put in nutshell is that the alleged unauthorised absence from duty referred into the aforesaid two charge sheets against him was due to the reason of sickness and he had submitted his leave applications and medical certificates, whenever, he remained absent from duty. By way of replies to the charge sheets he already has submitted that he suffered from mental disturbance and had to undergo the said problem during the aforesaid absence period. He also made it clear that he was taking treatment from 'native' medical practitioners and therefore, on certain occasions he could not furnish the medical certificates. As far as the findings of the enquiry officer on the 2nd charge sheet holding him guilty of the charges, he contended that there was absolutely no evidence to justify the finding of the guilt recorded against him as the management did not lead any legal evidence to establish the charges of misconduct. On the other hand he

examined himself to depose to the fact that he was suffering from illness supported by the evidence of his mother examined during the course of enquiry. He contended that the findings of the enquiry officer are based on 'no evidence' and contrary to the evidence on record suffering from perversity. He also challenged the action of the Disciplinary Authority in clubbing both the charge sheets and then passing the impugned punishment order on the ground that it suffered from violation of principles of natural justice. He challenged the order passed by the Appellate Authority, as well, contending that it failed to apply its mind to the requirements of Regulation 31. Lastly, he contended that the impugned punishment order in removing him from service is grossly disproportionate and shocking and therefore, he requested this tribunal to allow his reference by passing an award setting aside the impugned punishment order passed against him with relief of reinstatement and all other consequential benefits.

7. The management by its counter statement while repeating the charges of misconduct levelled against the first party in both the charge sheets contended that after conducting the DE against the first party giving him fair and reasonable opportunity to participate in the proceedings, the enquiry officer having considered the oral and documentary evidence produced before him rightly, came to the conclusion that charges of misconduct against the first party have been proved and he has rightly been imposed with the punishment of removal from service keeping in view the gravity of the misconduct committed by him. The management contended that the charges of misconduct of unauthorised absence levelled against the first party had never been denied by him during the course of enquiry except his self conflicting defence that some times he has submitted the medical certificates and some times contending that he took treatment from native Doctors being unable to obtain any medical certificate for the period of his absence from duty as mentioned in the charge sheets. The management also took up the contention that the reference on hand itself deserves to be rejected on account of abnormal delay in raising the dispute before the concerned authorities as he was removed from service by order dated 17-08-1994, his appeal was dismissed by order dated 09-12-1994 and whereas he approached the conciliation officer by raising the dispute on 11-03-2002 i.e. after a period of 8 years that too without offering any satisfactory explanation for the delay caused in raising the dispute. Therefore, the management requested this tribunal to reject the reference.

8. Now keeping in view the finding recorded by this tribunal on the first charge sheet dated 17-09-1992 holding that the DE held on the said charge sheet was not fair and proper, let us in the first instance find out as to whether the charges of misconduct of unauthorised absence levelled in the said charge sheet have been substantiated by the management by leading evidence on merits before this tribunal.

9. MW2, who happened to be the Branch Manager during the period the first party remained absent from duty as alleged in the charge sheet has filed his affidavit before this tribunal giving out the details of the charge sheet with reference to the aforesaid documents at Ex. M 15 to M47. His statement at Paras 2 to 4 in the affidavit running as under :—

"The first party while he was working at Somasamudra branch of the second party bank by submitting an application dated 08-08-1991 absented himself from work from 07-08-1991 and sought leave on medical grounds for the period 07-08-1991 to 14-08-1991 without submitting the Medical certificate. He did not report for work on 16-08-1991 and continued to remain absent unauthorisedly. His absence was reported by the branch to the head office and the head office of the second party bank sent letters to first party calling upon him to report for work and to explain the reasons for his unauthorised absence. The letters addressed to first party bearing No. STF PW OLS 3085 91-92 dated 24-09-1991, STF PW OLS 3426 91-92 dated 11-10-1991, STF PW OLS 3796 91-92 dated 13-11-1991 is produced herewith and marked. The first party had received the letters dated 24-09-1991 and 11-10-1991 and the postal acknowledgement received therefore is produced as exhibits. The letter dated 15-11-1991 was returned undelivered. Despite the above letters the first party neither replied letters nor reported for work till 21-12-1991 and also did not produce any medical certificate as required under the rules of the second party bank in support of his absence even at the time of reporting for work. The first party also did not submit any explanation for his unauthorised absence even after reporting for work and therefore the unauthorised absence of first party for 136 days was treated as leave without pay by second party bank vide proceedings of the Chairman no. STF TGB GEN OLS 1588 91-92 dated 13-01-1992 with right to initiate disciplinary action for the same as it constituted a misconduct within the provisions of Second Party bank service regulations.

Again first party on 01-02-1992 availed a day's leave and although was required to report for work on 03-02-1992 (02-02-1992 being holiday) he absented from work without any leave being granted and by submitting leave application on 04-02-1992, 07-02-1992 had sought medical leave without submitting any medical certificate as required under the leave rules of the second party bank. The Second party bank had called for his explanation for his unauthorised absence by serving him a letter STF PW OLS 4993 91-92

dated 21-02-1992. The first party acknowledging the said letter sent a letter dated 27-02-1992 with offering any explanation for his unauthorised absence and assured to report for work on 29-02-1992. But he failed to report for work even on 03-03-1992 as required and hence he was again served with a memo No. STF PW OLS 6566 91-92 dated 30-03-1992 and was directed to report for work and explain the reasons for his unauthorised absence. Despite the said letter first party failed to report for work and he joined duties only on 02-05-1992 by submitting a letter of even date. Not only he did not offer any explanation for his unauthorised absence from 01-02-1992 till 30-04-1992 but also did not submit any medical certificate in support of his absence on medical grounds as claimed by him. Therefore, the unauthorised absence of first party for 90 days was treated as leave without pay by the second party bank vide proceedings of the Chairman No. STF TGB GEN OLS 253 91-92 dated 21-05-1992 with right to initiate disciplinary action for the same as it constituted a misconduct within the provisions of second party bank service regulations.

Similarly the first party absented from work unauthorised from 13-05-1992 to 10-09-1992 and he failed to offer any explanation for his unauthorised absence despite he was sent letter STF PW OLS 1171 92-93 dated 27-05-1992 and his absence for the said period was treated as leave without pay by serving on him proceedings of the Chairman no STF TGB GEN OLS 1588 92-93 dated 13-01-1993 with right to initiate disciplinary action for the same as it constituted a misconduct within the provisions of second party bank regulations."

10. During the course of his cross examination by the first party nothing worth was elicited from his mouth so as to shake his testimony on the material particulars of the case as deposed by him in the affidavit. The suggestion made in MW2 that first party was submitting leave applications for the period of his absence and that he went on leave for his absence period his leave being sanctioned have been denied by the witness. The suggestion that the first party submitted his medical certificates many times and some times his leave letters were not accompanied by medical certificates, he being treated from the native doctors was also denied by MW2. Except the aforesaid suggestions nothing worth was brought out in the cross examination of MW2 to speak to the fact that the absence of the first party during the period mentioned in the charge sheet was an authorized absence and not an unauthorised absence.

11. The first party in his affidavit at Para 3 averred that it is due to his ill health, he could not attend the duty during the period from 07-08-1991 to 14-04-1991 and at that

time he was taking treatment from native Vydhya and that he has submitted leave application for the absence period. He stated that whenever he was absent from duty he availed leave as per the bank Regulations. He stated that his absence from duty was beyond his control and not with any mala fide intention. He could not submit the medical certificate being treated by native Vydhya and medicines. At Para 4 of the affidavit he stated that as he was not keeping well, he was not in a position to make any correspondence with the bank. At Para 5 he stated that his absence was on account of his illness and he submitted leave applications some times being accompanied by medical certificates. During the course of his cross examination he admitted that he remained absent from duty from 07-08-1991 to 20-12-1991 by giving reasons in his leave applications that he was suffering from joint pains and stomach ache. He admitted that though he asked for 8 days leave but remained absent continuously for 136 days. He stated that he has given medical certificates and denied the suggestion that he has not furnished any medical certificate despite several reminders by the management made to him. He admitted that again from 01-02-1992 to 30-04-1992 i.e. continuously for 90 days he remained absent though according to his leave application, he had sought leave for two days only. He admitted that once again from 13-05-1992 to 10-09-1992 i.e. for about 123 days he remained absent applying the casual leave only for two days. When he was confronted with his reply to the charge sheet marked at Ex.M39 he admitted that the reason for his absence given in the said reply were family problems i.e. his sister leaving the house without any trace and health problems.

12. During the course of arguments learned counsel for the management submitted that the charges of misconduct of unauthorised absence levelled against the first party as levelled in the first charge sheet have not only been proved by the statement of MW2 and documents but also by way of the very admissions made by the first party in his cross examination. He contended that absolutely no medical certificate for any period of absence was submitted by the workman either while proceeding on leave or at the time of joining the duty at any time, thereafter. He contended that the stand of the workman that he was suffering from ill health thereby not able to attend duty is again self conflicting as in his reply to the charge sheet he has given reasons of his absence from duty other than his ill health. Therefore, learned counsel submitted that the first party not only remained absent from duty unauthorisedly but failed to report duty despite the several letters issued to him to report for duty making it clear to him that the period of absence from duty has been treated as unauthorised absence. Therefore, thereby he committed the misconduct of remaining unauthorisedly absent from duty and so also in disobeying the orders of the management to report for duty.

13. Whereas, learned counsel for the first party, submitted that the first party had been submitting his leave

applications from time to time and could not submit the medical certificates being treated by the native doctors.

14. After having gone through the records, I find substance in the arguments advanced for the management. As seen above, MW2, the then Branch Manager, under whom the first party worked during the relevant period, in his affidavit in no uncertain terms has narrated the details of the period of authorised absence from duty by the first party and also has referred to the various documents and letters where under the first party was called upon to give his explanation with regard to his unauthorised absence and also to report for duty immediately.

As noted above the above said statement of MW2 has not at all been challenged during the course of his cross examination. Not a single suggestion was made to MW2 when he stated that the absence of the first party from duty during the leave period was unauthorised absence and that he failed to report for duty without any explanation for his unauthorised absence despite receiving the letters from the management. The suggestion made to MW2 for the first party to the effect that he always went on leave after the leave being sanctioned and that he submitted medical certificates some times along with leave applications and some times he could not submit the medical certificates being treated by the native doctors as noted above, has been denied by MW2. Moreover, these are the suggestions made on behalf of the first party without there being any evidence being produced by him suggesting to the fact that his period of absence was always against the sanctioned leave and his leave applications were accompanied by the medical certificates. On the other hand, the cat comes out of the bag when the first party was subjected to cross examination by the management. He, in no uncertain terms admitted in the first instance the fact that though he asked for eight days leave (from 07-08-1991 to 14-8-1991) he remained absent continuously for 136 days. He further admitted that from 01-02-1992 to 30-04-1992 i.e. for continuous 90 days he remained absent from duty though he applied leave for 2 days only. He then admitted that once again from 13-05-1992 to 10-09-1992 i.e. for about 123 days he remained absent though applied casual leave for two days only. Therefore, from the above said statement of the first party himself it becomes crystal clear that his absence from duty was not against the sanctioned leave. For the first time he was sanctioned leave just for a period of 8 days but remained absent from duty for a period of 136 days. On the second occasion he was absent from duty for 90 days though his leave application was only for two days. Similarly, on the 3rd occasion he remained absent from duty for a period of 123 days though his leave application was only for two days. In the face of the above said admissions by the first party it was too much for him how to take a stand in the cross examination of the MW1 saying that his absence was always against the leave sanctioned. Now, coming to

his statement that some times he submitted medical certificates for the treatment he received and some times he could not do so, the treatment being given to him by the native doctors. There was no evidence produced by him to the above effect. Infact at no time his leave application was accompanied by any medical certificate. This fact he admits in his affidavit itself, but denies it during the course of his cross examination before this tribunal. Therefore, there cannot be any hesitation for this tribunal to come to the conclusion that except for the period of 8 days on the first occasion and for 2 days each on the second and third occasions, his absence for the remaining period shown in the charge sheet was unauthorised absence, a misconduct under Regulations 22 of the aforesaid regulation named by the management bank. In the result, it must be held that charges of unauthorised absence as mentioned in the charge sheet coupled with the charges leveled against him in not reporting for duty despite the several letters served upon him to do so, have been proved by the management by sufficient and legal evidence.

15. Now coming to the 2nd charge sheet dated 16-03-1993. As already noted above, the DE conducted into this charge sheet is held to be fair and proper. In the face of the finding recorded by this tribunal, a heavy burden was cast upon the first party to establish before this tribunal that findings of the enquiry officer suffered from perversity. On going through the findings of the enquiry officer, I do not find any substance in the arguments advanced for the first party so as to suggest that finding suffered from perversity. Here again the fact that the first party remained absent from duty for the period mentioned in the charge sheet has never been denied by him except taking the contention that it was once again on account of his ill health and that he could not produce the medical certificates being treated by the native doctors. In order to substantiate the charges, the management during the course of enquiry produced the two leave applications dated 31-10-1992 and 16-11-1992 made by the first party and the various letters written by the bank to the first party in keeping him informed that his period of absence has been treated as unauthorised absence as it was the absence not against the sanctioned leave. The enquiry officer has given his sound and cogent reasonings in coming to the conclusion that the charges of misconduct have been proved against the first beyond any reasonable doubt. I feel it is necessary and worthwhile to bring on record the very reasonings given by the enquiry officer in holding the workman guilty of the charges found on pages 7 to 10 of the enquiry report under the heading "My Observations to above issues" as under :—

MY OBSERVATIONS TO ABOVE ISSUES:

- (1) Whether charge sheeted employee has applied for leave from 09-11-1992 to 14-11-1992 and same was sanctioned by head office and at the time of sanction whether charge sheeted

employee was strictly instructed to report back for duty on 16-11-1992. From the exhibit M.E.1 it is clear that the charge sheeted employee had requested six days PL from 09-11-1992 to 14-11-1992 on account of younger sister marriage fixed on 12th November 1992. As per exhibit ME.8 it is clear that the head office has sanctioned PL from 09-11-1992 to 14-11-1992 under reference OLS 1119, 92-93 dated 05-11-1992 with a strict instructions to report back for duty on 16-11-1992 and it is also mentioned that no more extension. On the other hand defence has not disputed about these documents. Hence, it is established that charge sheeted employee has applied leave from 09-11-1992 to 14-11-1992 and same was sanctioned by Head Office. Charge sheeted employee was strictly instructed to report back for duty on 16-11-1992.

- (2) Whether charge sheeted employee has extended leave upto 19-11-1992 without prior sanction from head office against the said instructions and whether he was expected to join back for duty on 20-11-1992.

From exhibit M.E.2 it can be seen that charge sheeted employee has extended leave upto 19-11-1992 due to unavoidable circumstances. He has stated in the letter due to some functions in connection with his sister marriage, he is requesting to consider the extension of leave upto 19-11-1992 and this extension of leave is not having prior sanction. On the other hand defence has not disputed this document hence, charge sheeted employee has extended leave upto 19-11-1992 without prior sanction from Head Office and charge sheeted employee was expected to join back for duty on 20th November, 1992.

- (3) Whether charge sheeted employee continued to remain absent without any further information and without sanction from 15-11-1992.

Presenting Officer has relied upon M.E. 3 to M.E. 7. M.E. 3 is the letter written by Somasamudra branch manager to senior Manager, Staff Section, head office Bellary under reference TGS,SD,STF 6HQ 92-93 VSS 214 dated 21-11-1992 wherein he has stated that charge sheeted employee has so far not resumed duties. ME4 is the letter written from Somasamudra branch to General Manager, Staff Section, HO, Bellary under reference TGS,SD 6HQ STF 92-93 VSS 230 dated 26-11-1992 wherein he has stated that

Shri B. Mahadevappa not reported for duty. M.E.5 is the letter written by Sumasudra branch to the Sr. Manager, Staff Section, H.O. Bellary under reference TGBSD 6HQ-92-93VSS dated 01-12-1992 wherein he has stated that Shri Mahadevappa has not come to the Bank since 09-11-1992. As per M.E.6 it is clear that Shri B. Mahadevappa has not report for duty till 30-12-1992. As per M.E.7, it is clear that Shri B.M. Mahadevappa has remained absent and not come to the branch on the other hand Defence has not disputed about these documents, hence it is clear that the charge sheeted employee has continued to remain absent without any further information and without sanction from 15-11-1992.

- 14) Whether an explanation was called to join back for duty immediately. Presenting Officer has relied upon M.E.10, as per this a letter has been sent to Shri B.M. Mahadevappa from Sr. Manager, Staff Section, Head Office, Bellary. It has been stated that charge sheeted employee has neither submitted leave application nor reported for duty. Remaining absent for duty without any message amounts to unauthorised absent. In spite of several advises, charge sheeted employee has continued to old habit of remaining unauthorised absence for duty. He has been instructed to report back for duty immediately. Further an explanation was also called from him. On the other hand Defence Representative has not disputed these documents. Hence it is clear that Bank has called an explanation to join back for duty immediately.

- 15) Whether charged sheeted employee has reported back for duty only on 30-01-1993

As per exhibit M.E. 11 it is clear that charge sheeted employee has reported for duty on 30th January, 1993 and in the said letter he has not mentioned the reasons for the long absence. On the other hand Defence has not disputed about the said document. Hence it is clear that charge sheeted employee has reported for duty on 30-01-1993 only.

- 16) By remaining absent without sanction of leave from 15-11-1992 to 29-01-1993 whether charge sheeted employee has violated guidelines of the bank and regulation 22 of the T.G. Bank Staff Service Regulation 1980

Presenting Officer has stated that charge sheeted employee has remained absent for

duty from 15-11-1992 to 29-01-1993 basing on the exhibit M.E. 9 (Proceedings of the Chairman treating the said period as one without sanction). M.E.14 (extract of attendance signing register). M.E.13 extract of attendance marking register this clearly shows that the said period has been treated as one without sanction. On the other hand Defence Representative has taken the plea that charge sheeted employee has availed leave from 15-11-1992 to 29-01-1993 and reasons for availment was ill health. He has also stated that he has taken treatment from local Doctors who will not issue any certificate so he cannot produce the certificate.

If the above contention of DR is true charge sheeted Employee would have mentioned the same while joining for duty (i.e. M.E.11) and immediately after receipt of proceeding of Chairman treating the above period as absent. Hence, I am of the opinion that the plea of the DR that charge sheeted employee was suffering from ill health and taken treatment from local Doctors far from truth and created for the purpose. So his plea is not acceptable.

As per exhibit M.E.15 and M.E.16 it is clearly advised that Medical certificates should be submitted along with leave application immediately after keeping himself absent for duty from staff member hence plea of Defence Representative is not acceptable as per exhibit M.E.16.

Basing on the above findings discussed in detail under Sl. Nos.1 to 6 it is established that Shri B. Mahadevappa had applied leave from 9-11-1992 to 14-11-1992 i.e. for six days and it was sanctioned from Head Office. While sanctioning the leave he was strictly instructed to report back for duty from 16-11-1992, charge sheeted employee extended the leave upto 19-11-1992 vide his letter dated 16-11-1992. Though he was expected to report back for duty on 20th November, 1992, he continued to remain absent without further information from 15-11-1992 to 29-01-1993 i.e. for 76 days, he has violated the guidelines of the Bank and also Service Regulations. It is also established that an explanation was called for his absence vide letter dated 01-12-1992. Charge sheeted employee's long absence has also affected normal functioning of the bank, thus the employee has committed an act of misconduct furnishable under Service regulation 30. I read with regulation 22/21 of Tungabhadra Gramen Bank (Staff Service Regulation 1980).

16. Therefore, from the reading of the afore said reasonings given by the enquiry officer, by no stretch of imagination it can be said that his conclusion in holding that the first party committed the misconduct of unauthorised absence was without any sufficient and legal evidence. The enquiry officer in length has discussed the oral and documentary evidence produced before him and has rightly come to the conclusion that the first party committed the misconduct of unauthorised absence from duty for the period mentioned in the charge sheet. Therefore, findings of the enquiry officer being supported by sufficient and legal, evidence, in turn, supported by cogent and valid reasonings by no stretch of imagination they can be termed as perverse to be interfered at the hands of this tribunal. In the result, it is to be held that the charge of misconduct leveled against the first party in the second charge sheet also stands proved.

17. Now, coming to the question of quantum of the punishment. It was well argued for the management that the first party is a chronic absentee having absolutely no regard for his duty and that because of his prolonged unauthorised absence, the management bank's functioning has been affected causing inconvenience to its customers at large. As seen from the first charge sheet, he remained absent from duty for a total period of 226 days and whereas as per the second charge sheet his period of absence was 76 days only. Though he claimed to have suffered from ill health, produced no medical certificates either alongwith the leave application or while reporting for duty. In fact, as noted above, he remained absent from duty against the leave sanctioned only for about a period of 12 days and for the rest of the period he was remaining absent unauthorisedly even without leave applications, much less, being accompanied by any medical certificate. The stand taken by him that he was being treated by the native doctors has not been supported by any evidence except his self serving statements. Therefore, keeping in view the conduct of the first party, in my opinion he deserves no sympathy from the hands of this tribunal. He deserves no punishment lesser than removal from service. The reference on hand as contended for the management also is not entertainable for the inordinate delay of 8 years caused in raising the dispute. The first party gave no reasons or offered any explanation as to what prevented him not to raise the dispute for about a period of 8 years after his appeal against the impugned order was dismissed by the appellate authority. This conduct of the first party again tells the tale upon his conduct that he was never diligent and interested either to perform his duties or to continue his services under the management. The bank institutions cannot afford an employee like the first party who remains absent from duty for no good reasons affecting smooth

functioning of bank business. In the result, reference deserves no merit and hence the following award :

AWARD

The reference stands dismissed. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 26th June, 2007).

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 9 जुलाई, 2007

का.आ. 2140.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार, तुंगभद्रा ग्रामिन बैंक के प्रबंधन के संबंध नियोजकों और उनके कार्यकारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचाट (सं.) संख्या 09/1994 को प्रकाशित करती है, जो केंद्रीय सरकार को 09-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/227/93-आई.आ. (बी-11)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th July, 2007.

S.O. 2140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/1994) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the management of Tungabhadra Gramina Bank and their workmen, received by the Central Government on 09-07-2007.

[No. L-12012/227/93-IRTB QI]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE 560022

Dated : 22nd June, 2007

PRESENT:

Shri A. R. Siddiqui, Presiding Officer

C.R. No. 09/1994

I PARTY

The General Secretary,
Tungabhadra Gramin Bank
Employees Union,
144, Kappal Road,
Bellary-583 103

II PARTY

The Chairman,
Tungabhadra Gramin Bank,
No. 32, Sanganakal Road,
Gandhi Nagar,
BELLARY-583 103

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-1201/2227/92-IR (B-I) dated 3rd January, 1994 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Tungabhadra Granth Bank in imposing the penalty of Stoppage of Seven increments with cumulative effect in respect of Sri T. Basavareddy, Clerk vide proceedings dated 27-03-1992 is legal and justified? If not, to what relief the workman is entitled."

2. A charge sheet dated 24-02-1991 came to be issued to the first party workman in the following terms:

"Whereas there are *prima facie* grounds for believing that you have been guilty of misconduct, the particulars whereof are given below, this charge sheet has been drawn up against you and you are hereby required to submit to me within 7 days of receipt of this charge sheet, a statement in writing setting forth your defence, if any and showing cause as to why appropriate penalty should not be imposed upon you.

CHARGE:1

While you were working at Gingera Branch, you carried out outside activities and involved yourself in cottonseeds selling business. During June-July, 1990 period you sold around 70 Kgs. of Cottonseeds to various farmers of Gingera and surrounding villages. Among them include following farmers of said village.

1. Sri Narayappa S/o Narappa
2. Basiresab S/o Basiresab Bagali
3. Suddappa Uppar S/o Kuttappa
4. Mohdun Ali S/o Hassan Sab
5. K. Lakappa S/o Nengappa Gingera.

Among these persons from S. No. 1 to 3 have availed Complaint from our Gingera branch.

You have sold the cottonseeds to the said farmers by informing them that they were of "DCH32" variety whereas they were not of that standard or quality. The farmers took it for granted because of your official position and came to know that the seeds were of quality seeds only after about 2 months of sowing, by which time the farmers had made considerable investment on the crops by way of fertilizers/pesticides, labour charges etc. Because of

the duplicate and sub-standard seeds supplied by you the farmers have not only lost the investment made on the crop but also have lost their valuable crop itself.

You have thus caused heavy loss to the farmers who had purchased the seeds from you which ultimately resulted in complaints and loss of image to the bank. Hence, your above sale of seeds is detrimental to the interests of the bank. By using your official position for profit and by acting in a manner detrimental to the interests of the bank you have committed misconduct under Regulation 30(1) of TGB Staff Service Regulations, 1980.

CHARGE:2

While working as Junior Clerk at our Gingera branch you have sold about 70 Kgs. of cottonseeds to farmers/visitors of surrounding villages of Gingera. You have thus involved yourself in subsidiary services of earning. As per Regulation No. 21 of TGB (Staff Regulations, 1980) to which you are bound, you were supposed not to engage yourself in any activity outside the scope of your employment without the express prior permission from the competent authority. By indulging yourself in the activity of selling cottonseeds you have committed breach of the said regulation No. 21 of TGB (Staff Regulations, 1980, and by committing breach of the said Regulations of 21 of TGB (Staff Service Regulations, 1980 you have committed misconduct under Regulation 30(1) of TGB (Staff Service Regulations, 1980."

3. The explanation furnished by the first party not being found satisfactory Domestic Enquiry was ordered against him. On the conclusion of the enquiry proceedings, the enquiry officer submitted his report dated 16-10-1991 with a conclusion that both the charges levelled against the first party in the charge sheet have not been proved and that the first party is not guilty of the aforesaid charges. The Disciplinary Authority however, did not agree with the findings of the enquiry officer exonerating the first party from the charges levelled against him and giving his own reasons held the workman guilty of the charges vide order dated 20-03-1992 and sent this order copy of the first party along with the enquiry report proposing the punishment of stoppage of seven increments with cumulative effect asking the first party to show cause in writing as to why the above said penalty should not be imposed upon him. It appears from the enquiry records that in response to the said order of the Disciplinary Authority, the first party submitted his explanation dated 16-03-1992 as to why the enquiry officer's findings should be accepted and that the reasons given by the Disciplinary Authority in not accepting the same were against the evidence brought on record. However, the Disciplinary

Authority by the impugned punishment order dated 27-3-1992 rejected the above said explanation offered by the first party and confirmed the above said proposed punishment of stoppage of seven increments with cumulative effect. The first party then made an unsuccessful attempt in preferring appeal against the said punishment order to the board of Directors, Tungabhadra Gramina Bank Head Quarter, Bellary as his appeal came to be dismissed by order dated 22-10-1992. The first party then raised an industrial dispute resulting into the present reference proceedings.

4. The first party in his claim statement challenged the very authority of the management in conducting the enquiry proceedings under the provisions of Tungabhadra Gramin Bank (Staff) Service Regulations, 1980 in the absence of certified standing orders of the management and took a contention that there being no certified standing orders as required under the Industrial Employment (Standing Orders) Act, 1946. With respect to the merits of the case the first party contended that after holding the enquiry, the enquiry officer submitted his report dated 36-10-1991 and after considering the evidence brought on record he came to the conclusion that the first party as not indulged himself in selling cottonseeds and there was no damage to the image of the bank. He came to the conclusion that both the charges levelled against the first party have not been proved and gave his findings accordingly. However, the Disciplinary Authority having no powers to differ with the findings of the enquiry officer under the aforesaid Regulations has given its own findings to the effect that on the basis of the evidence led during the course of enquiry, charges of misconduct have been proved and he gave his findings contrary to the findings of the enquiry officer. The first party contended that before passing of this order in giving the findings contrary to the findings of the enquiry officer, the Disciplinary Authority did not issue a proposition notice to him setting forth its proposal to differ from the findings of the enquiry officer along with the reasons therefore and called upon the first party to show cause as to why the Disciplinary Authority should not set aside the findings of the enquiry officer exonerating him from the charges. He was not given any notice and no opportunity was given to him in total contravention of the principles of natural justice and proposed the punishment of stoppage of seven increments with cumulative effect asking him to give representation on the quantum of the punishment itself. Therefore, the first party contended that the findings of the enquiry officer were well based on the evidence on record and the Disciplinary Authority was not justified in coming to the conclusion contrary to the findings of the enquiry officer and since the order to the Disciplinary Authority suffered from violation of principles of natural justice not affording him opportunity of hearing before such punishment was proposed holding him guilty of the charges, is liable to be set aside as illegal, arbitrary and discriminatory in nature.

5. The management by its Counter Statement while contending that the Disciplinary Authority has got every right and authority to initiate the disciplinary proceedings against the first party under the aforesaid Regulations rightly conducted the enquiry proceedings and rightly differed from the findings of the enquiry officer in holding the first party guilty of the charges. The Management contended that after the enquiry findings were submitted to the Disciplinary Authority by the Enquiry Officer, on detailed examination it was found that the enquiry officer did not appreciate the materials properly and has come to the conclusion only by relying upon the evidence of the first party workman and therefore, the findings were perverse. The Disciplinary Authority therefore, on going through the entire enquiry records came to the conclusion that there was sufficient material on record to establish the misconduct committed by the first party workman and therefore, rejected the findings of the enquiry officer and issued a show cause notice dated 20-02-1992 proposing the punishment of stoppage of seven increments with cumulative effect giving the reasons in coming to the conclusion that charges of misconduct were proved against the first party. Thereafter, the first party was called upon to submit his explanation if any, over the proposed punishment. Therefore, the management contended that the reasonings given by the Disciplinary Authority in holding the workman guilty of the charges as against the findings of the enquiry officer exonerating him from the charges was legal and justified in the light of the evidence brought on record and that the first party by way of second show cause notice was given an opportunity of hearing on the quantum of the punishment and in the result, there was no violation of principles of natural justice and requested this tribunal to reject the reference.

6. As, could be read from the order sheet maintained by this tribunal, on 19-1-1999 a memo was filed for the first party workman conceding the fairness and validity of the enquiry and with the consent of the parties the enquiry file papers were marked at Ex. M1. By award dated 1-6-2001, my learned predecessor rejected the reference. Aggrieved by this award the first party approached the Hon'ble High Court in Writ Petition No. 39265/01. His Lordship of Hon'ble High Court quashed the impugned award and remitted the matter back to this tribunal for fresh adjudication expeditiously.

7. After the remand, I have heard the learned counsels for the respective parties and posted the matter this day for award. Therefore, in the light of the respective contentions of the parties and in the face of the finding recorded by this tribunal, that the DE conducted against the first party is fair and proper (being conceded by the first party) the point to be considered would be "whether the impugned punishment order dated 20-7-1992 passed by the Management/Disciplinary Authority in disagreeing with the findings of the enquiry officer is exonerating the

first party from the charges of misconduct leveled against him is legal and justified".

8. Learned counsel for the first party in his argument submitted that the impugned punishment order suffered from violation of principles of natural justice as the Disciplinary Authority while disagreeing with the findings of the enquiry officer did not afford any opportunity of hearing setting forth the reasons in coming to the conclusion different from the conclusion arrived at by the enquiry officer. He contended that the Disciplinary Authority without setting forth the reasons and issuing proposition notice in disagreeing from the findings of the Enquiry Officer *pro-moto* recorded the findings of the guilt holding the workman guilty of the charges and issued a show a cause notice along with the enquiry report calling upon the first party to submit his explanation only on the quantum of the punishment. Therefore, learned counsel submitted that if at all the Disciplinary Authority wanted to differ from the findings of the Enquiry Officer, it must have set out the reasons in detail with a proposition notice as to why he should disagree with the enquiry findings giving him opportunity of hearing on the point and since it has not been done in the present case, the principles of natural justice have been violated and in the result, the impugned punishment is liable to be set aside. To support his argument learned counsel cited a ruling reported in AIR 1998 SC page 2713 - Punjab National Bank & Others Appellants V. Kunj Behari Misra. On the point that Regulations referred to supra do not confer powers upon the Disciplinary Authority to issue the charge sheet and conduct the enquiry proceedings, learned counsel referred to a decision reported in ILR 1996 Kar 2069.

9. Whereas, learned counsel for the management, vehemently, argued that the order dated 20-02-1992 passed by the Disciplinary Authority in disagreeing with the findings of the Enquiry Officer has very much set out the reasonings based on the materials brought on record during the course of enquiry and this order was communicated to the first party along with the enquiry report seeking his explanation to the quantum of the punishment and therefore, it cannot be said that the first party was not given any opportunity of hearing before the impugned punishment order was passed. Learned counsel therefore, submitted that in passing the above said order, the Disciplinary Authority has very much complied and adhered to the principles of natural justice as contemplated under the principle laid down by their Lordships of Supreme court in the case referred to supra cited on behalf of the first party. To support his arguments learned counsel also filed a copy of the decision of the Supreme Court reported in AIR 1998 SC 2713.

10. On going through the records, more so, the aforesaid order dated 20-02-1992 passed by the Disciplinary Authority and communicated to the first party

along with the report and in the light of the principle laid down by their Lordships of Supreme Court in the aforesaid decision, I am not inclined to accept the arguments advanced for the management that principles of natural justice have been adhered to by the Disciplinary Authority before passing the impugned punishment order. On the point as to what should be the procedure to be followed by the Disciplinary Authority while disagreeing with the findings of the Enquiry Officer in exonerating the delinquent concerned from the charges of misconduct alleged to have been committed by him, their Lordships of Supreme Court at Para 18 of the said decision laid down the principle as under :

"The Disciplinary Proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Enquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty on the basis of the conclusions. It is necessary for the authority which is to finally record an adverse finding to give hearing to the delinquent officer. If the Enquiry Officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the Disciplinary authority. Even when an earlier opportunity had been granted to them by the Enquiry officer, it will, therefore, not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. Under Regn. 6 the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous where the charged officers succeed before the enquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This

is required to be done as a part of the first state of enquiry."

11. Therefore, from the reading of the aforesaid observations made by their Lordship of Supreme Court, it becomes crystal clear that the delinquent concerned cannot be deprived of representing to the disciplinary authority before that authority differs with the enquiry officers report and while recording a finding of guilt imposes punishment on the officer (delinquent concerned). Their Lordship further held that in any such situation the charged officer (the delinquent) must have an opportunity to represent before the Disciplinary Authority before final findings on the charge are recorded and punishment imposed. Therefore, in the light of the principles laid down by their Lordship of Supreme Court at the aforesaid para and the observations made by them at Paras 16 & 17 of the decision, it gets clear that the Disciplinary Authority in case of disagreeing with the enquiry officers findings must issue a show cause notice to the employee concerned, giving him the tentative reasons for its disagreement with the enquiry officers findings and after considering the representation made by him to the show cause notice, shall pass fresh orders recording his reasons. It is further made clear that while doing so the Disciplinary Authority shall send the enquiry report along with the show cause notice issued to the first party. In the instant case as argued for the first party this requirement of issuing the show cause notice to the first party giving him the tentative reasons for disagreement to the enquiry officer's findings has not been fulfilled. In the instant case what the disciplinary authority has done is that after it received the enquiry officer's findings, went through the findings and passed an order dated 20-02-1992 holding the workman guilty of both the charges levelled against him in the charge sheet by giving out the reasons in coming to the conclusion that the first party was guilty of the charges. By the aforesaid order, the Disciplinary Authority proposed the punishment in question and called upon the first party to show cause as to why the punishment should not be confirmed. Therefore, before passing this order in proposing the impugned punishment and recording the finding that the first party has been found guilty of the charges, the disciplinary authority did not given opportunity of hearing to the first party by issuing a show cause notice and setting out tentative reasons for its disagreement with the enquiry officer's finding calling upon his explanation as to why it should disagree with the findings of the enquiry officer. In the instant case the disciplinary straightaway after the receipt of the enquiry report held the first party guilty of the charges giving the findings of its own and then proposed the impugned punishment and the only opportunity of submitting the explanation given to him was with respect to the quantum of the punishment and not on the point as to why the Disciplinary Authority

should differ from the findings of the enquiry officer. In the result, the principle laid down by their Lordship of Supreme Court which infact have not been disputed by the management also, must lend support to the case of the first party that he has been denied the opportunity of hearing by the disciplinary authority before the authority passed an order giving findings against the first party holding him guilty of the charges and before proposing the punishment of stoppage of increments, as noted, above. Therefore, in the light of the aforesaid discussion, the only conclusion to be drawn would be that the order dated 20-02-1992 passed by the disciplinary authority proposing the impugned punishment resulting into the impugned punishment order dated 27-3-1992 suffered from violation of principles of natural justice and therefore, both the orders are liable to be set aside not being sustainable in the eye of law. In the aforesaid decision their Lordship of Supreme Court did not remand the matter to the disciplinary authority for the start of de novo proceedings to give such an opportunity of hearing to the delinquent concerned before the punishment order was passed as the dispute in the said decision was more than 15 years old, one of the delinquent being already dead and the other delinquent had been attained the age of superannuation. In the instant case also it appears to me that it will not be in the interest of justice in remanding the matter to the Disciplinary Authority to afford such an opportunity of hearing to the first party before passing of the impugned punishment order as the dispute in the present case also is for the alleged misconduct committed in the year 1992 and we are now in the year 2007, a period of about 15 years having already been elapsed. One more reason not to remand the matter for fresh disposal to the disciplinary authority is the nature of the alleged misconduct said to have been committed by the first party workman not loosing sight of the fact that the findings of the enquiry officer have gone in his favour. In the result, the only order to be passed in this case would be to set aside the impugned punishment order directing the management to release the seven increments stopped by it against the first party with consequential benefits. Hence the following award :

AWARD

The management is directed to release the seven increments stopped by it and shall reimburse the first party for the loss he sustain on account of stoppage of those seven increments from the date of the punishment order till today and herein onwards. No Costs.

(Dictated to PA, transcribed by her corrected and signed by me on 22nd June, 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 11 जुलाई, 2007

का.आ. 2141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को यथा 17 के अनुसरण में, केंद्रीय सरकार द्वे. सी. एल. के प्रबंधन के संबंध विवादों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, आसनसोल के फैवाट (संदर्भ संख्या 19/1996) को प्रकाशित करती है, जो केंद्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

[सं. एन-22012/485/1995-आईआर(सी-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th July, 2007

S.O. 2141. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/1996) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 11-07-2007.

[No. L-22012/485/1995-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Shri Md. Sarfaraz Khan, Presiding Officer

Reference No. 19 of 1996

PARTIES: The Agent, Bahula Colliery of E.C.L.,
Burdwan

Vs.

The Jt. General Secretary, Colliery Mazdoor
Union, Ukhra, Burdwan.

REPRESENTATIVES

For the Management: Sri P. K. Das, Advocate.

For the Union (Workman): Sri M. Mukherjee, Advocate

INDUSTRY: COAL **STATE:** WEST BENGAL

Dated the 25-01-2005

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India, through the Ministry of Labour vide its letter No. L-22012/485/1995-IR(C-II) dated 02-05-1996 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Bahula Colliery under Kenda Area of M/s. ECL in dismissing the services of Sh. Sahdeo Majhi, Ex-UG Loader is legal and justified? If not, what relief the concerned workman is entitled to?"

2. After having received the Order No. L-22012/485/1995-IR(C-II) dated 02-05-96 of the said reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication of the dispute, a reference case No. 19 of 1996 was registered on 09-05-96 and accordingly an order to that effect was passed to issue notices to the respective parties through the registered post directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In compliance of the said order notices by the registered post were issued to the respective parties. Sri M. Mukherjee, Advocate for the delinquent workman and Sri P.K. Das, Advocate for the management appeared and filed their respective statements in support of their case.

3. In brief compass the case of the union as set forth in the written statement is that Sh. Sahdeo Majhi was a permanent employee of Bahula Colliery under the E.C.L. Ltd. The delinquent workman was compelled to remain absent from his duty w.e.f. 03-07-99 on account of his illness and he was undergoing medical treatment from different doctors nearby his native place of Giridih. Due to his such absenteeism the management has dismissed Shri Sahdeo Majhi from his service on 27-05-03.

4. The main case of the union is that no enquiry was ever held before dismissing the said employee or even if held, the workman was not given any opportunity to defend himself. Before the enquiry he was not even intimated that the enquiry is going to be held against him. As such the dismissal order is illegal, arbitrary, whimsical, colourable, exercise of power and violative of principle of natural justice.

5. It is also the case of the union that before issuing dismissal order the management did not supply the copy of enquiry proceeding, enquiry report and proposed punishment is claimed to be arbitrary, illegal and fit to be set aside in this score alone.

6. The further case of the union is that by awarding capital punishment the management has snatched away the livelihood and bread of the workman, causing great hardship to the family in these days of acute unemployment. The quantum of punishment imposed is claimed to be too harsh and disproportionate to the gravity of the misconduct alleged. Accordingly the union has sought a relief for setting aside the dismissal order and to reinstate the workman to his service together with all the back wages and the other financial benefit with the continuity of the service.

7. On the other hand the defence case as per the averments made in its written statement is that the instant

reference as referred to the Hon'ble Tribunal is entirely misconceived and the same is not maintainable in law. Besides this there are no valid reason or ground for initiating any industrial dispute on terms of reference as referred by the appropriate Govt. for adjudication before this Tribunal.

8. The main defence version of the management is that Sri Sahdeo Majhi, Ex-U.G. Loader, Babula Colliery was absenting from duty since 03-07-92 without prior permission or authorized leave or any satisfactory cause and for which he was chargesheeted for his misconduct. Since the concerned workman was not available in the colliery, the copy of the charge sheet was sent to his home address together with letter of enquiry vide letter No. Agent/BC/C.6E/68 dated 17-02-93 and the copy of enquiry letter was also published in the local News Paper dated 25-02-93 published from Asansol but in spite of the publication and sending letter to the home address the concerned workman neither appeared before the Enquiry Officer nor sent any written intimation stating the reason of his inability to attend the enquiry and as such the enquiry was held ex-parte. The said enquiry officer after holding the enquiry proceeding submitted his findings before the competent authority who subsequently after considering the said enquiry proceedings, its report, chargesheet and other connected papers of the said employee awarded a punishment of dismissal from his service. The copy of the order of dismissal was sent to the concerned workman vide letter No. Pers/KND/Termination/1791 dated 27-05-93.

9. Lastly the contention of the management is that the order of dismissal was rightly passed by the competent authority in accordance with the provisions of Standing Orders applicable to the establishment. The management denied the contention of the union made in its written statement claiming them to be totally wrong, baseless and beyond the scope of truth. The punishment is also claimed to be not disproportionate rather the same is just, proper, legal and the union is not entitled to get any relief or reliefs as prayed for.

10. From perusal of the record it transpires that on 03-09-98 a hearing on preliminary point was made and the validity and fairness of the enquiry proceeding was held to be invalid. It is further clear from the order sheet dated 16-10-98 that the request of the management, an adjournment was granted for filing the affidavit of the witness and other documents. The order sheets further indicate that right from 27-11-98 to 25-03-03 several adjournments were granted to the management for adducing evidence but to no effect and ultimately the evidence of the management has closed and the case was fixed for hearing. The argument enhanced by the parties were heard in detail on 25-01-05 and the award was reserved for order.

11. In view of the pleadings of the parties and the materials available on the record I do find certain facts

which are admitted by the respective parties. So before entering into the discussion of the merit of the case I would like to mention those facts which are admitted one.

12. It is the admitted fact that Sh. Sahdeo Majhi, Ex-U.G. Loader was the permanent employee of Babula Colliery under Kenda area of M/s. Eastern Coalfield Limited.

13. It is also the admitted fact that the delinquent employee was absent from his duty with effect from 03-07-92 to 11-11-92 without any leave or prior permission and information to the management.

14. It is further admitted case of the parties that the workman concerned was chargesheeted on 11-11-92 for his unauthorized absence from duty w.e.f. 03-07-92 to 11-11-92 and an Ex-parte domestic enquiry was conducted by the management holding him guilty for the misconduct of unauthorized absence for the said relevant period in question.

15. It is also admitted fact that there is no chargesheet against the workman concerned for being habitual absentee. It is the settled principle of law that the facts admitted need not be proved. Since these all facts are admitted one, so I do not think proper to discuss the same in detail.

16. On perusal of the records it transpires that none of the parties has examined any oral witness in support of their case rather they have filed Xerox copies of some documents. The management has filed the Xerox copy of the chargesheet, enquiry proceedings along with the reports, notice of enquiry proceeding dated 17-02-93 and one Local News Paper Dainik Lipi of Asansol.

17. Likewise the union has also filed treatment paper of Sh. Sahdeo Hansdu issued by Mohulpahari Christian Hospital for the disease of U.T.I., Prescription dated 28-7-92 granted by the Dr. V.N. Singh, C.A.S., Palajori, Deoghar, pathological examination report of urine of the concerned workman dated 07-04-93 granted from Aftab Hospital Pachambe Giridih and prescription issued by Aftab Hospital, Giridih.

18. The management in para I of its written statement has taken the plea that the instant reference is bad in the eye of law as the same is legally not maintainable. It is also claimed that in the prevailing facts and circumstances of the case the dispute is misconceived one. But the aforesaid issue was neither raised nor pressed by the management during the course of hearing of the said reference. The management has neither examined any oral witness nor tendered even a chip of paper in support of its plea. As such I do not find any defect in the maintainability of the reference and the facts of the case very well comes under the purview of Industrial Disputes Act. The Govt. of India through the Ministry of Labour has rightly referred the dispute to this Tribunal for its adjudication and as such this issue is decided in favour of the union and against the management.

19. Admittedly the management in order to prove the fact that the chargesheet vide letter No. Agent/BC/PD/C-BE/31/92/789 dated 11-11-92 and letter of enquiry vide letter No. Agent/BC/C-BE/68 dated 17-02-93 were sent to the home address of the delinquent workman has filed the Xerox copies of the said documents but in spite of giving several opportunity to the management to produce the peon book or any other proof to show that the chargesheet was ever served or that notices were served on or offered to the workman, the management hopelessly failed to comply or produce the said relevant documents in support of its contention. Besides this the publication of the enquiry letter in the Local News paper dated 25-02-93 published from Asansol is also not helpful to the management because of the fact that the delinquent workman's home address is of the district of Dumka where this Local News paper of Asansol is not expected to be available. As such keeping in view of these all relevant facts the then Presiding Officer of this Tribunal has rightly held the enquiry proceeding to be unfair and invalid. Apart from this fact the management was subsequently given several opportunity to prove the fairness and validity of the enquiry proceeding by examining the witnesses and tendering the concerned relevant documents before the court or tribunal but the management utterly failed in this regard. It was the bounden duty of the management to show and prove before the court or tribunal that the communication was sent on proper address by registered post. The union has categorically denied the charges levelled against him by filing his written statement. No opportunity of hearing was given to the workman concerned. Date, time and place of enquiry was not intimated to him. Manner in which the enquiry proceeding was conducted was not in conformity with the principles of natural justice. So charges cannot be said to have been proved in absence of evidence being led by the management and the order of dismissal based on such enquiry report cannot be sustained.

20. Now the next main point for consideration before the court is to see as to how far the punishment of dismissal awarded to the delinquent workman by the management is just and proper and is proportionate to the alleged nature of misconduct.

21. Heard both the parties on the aforesaid point in question. It was submitted by the side of the union that at best it can be said to be a simple case of unauthorized absence only for about four months and the absence from duty during the relevant period is duly explained and the reasons of absence supported with medical certificate are sufficient enough. Treatment paper of Sh. Sahdeo Hunsda issued by Mohulpahari Christian Hospital prescription granted by Dr. V. N. Singh in favour of the workman concerned, treatment paper issued by Aftab Hospital, Giridih and pathological report of Sh. Sahdeo Majhi go to show that the delinquent workman was suffering from

C.T.I. Causing partial impotency and Mental weakness as well. I find much force in the argument of the union side and I am convinced to hold that the workman concerned was admittedly absent from his duty during the relevant period under the said compelling circumstances which was beyond his control.

22. It was further argued that the delinquent workman has got unblemish record during his service tenure and since there has not been any complaint of any misconduct either by unauthorized absence or any other sort of misconduct. The management has also not chargesheeted him for habitual absenteeism nor any chit of paper in this regard has been filed in the court nor there is any pleading in the written statement of the management in this regard. So it can very well be concluded that it is admittedly the first offence of unauthorized absence for which no prior permission was taken or any information could be sent to the authority concerned. But the said reasons have been sufficiently explained and supported by the medical certificates indicating the compelling circumstances beyond the control of the delinquent workman.

23. It was also argued out by the side of the union that it is a simple case of an unauthorized absence for a few months under the compelling circumstance which cannot be said to be a gross misconduct. The attention of the court was drawn towards the provisions of Model Standing Order where the extreme punishment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty cannot be imposed upon the workman in such a minor case of alleged misconduct of an unauthorized absence for a few months. The points of argument has got much force and convincing as well.

24. It has been several times observed by the different Hon'ble High Courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disciplinary authority to consider the socio-economic background of the workman, his family background, length of service put in by the employee, his past record and other surrounding circumstance including the nature of the misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which must have to be kept in mind by the authority at the time of imposing the punishment which is not done by the management in this case.

25. Admittedly the workman concerned is an illiterate man of Majhi by caste who is the member of Scheduled Tribes and the member of the weaker section of the society. He is financially weak and poor who has suffered a lot for more than ten years. The attention of the court was drawn towards the provision of the Model Standing Order laid down under clause 27(1) (page 5) where various minor punishment have been prescribed to be awarded according to the gravity of the misconduct. I fail to think as to why only maximum punishment available under the said clause should be awarded in the present facts and circumstance of

the case. It has been observed by the Apex court that justice must be tempered with mercy and that the delinquent workman should be given an opportunity to reform himself and to be loyal and disciplinary employee of the management. Besides this it is also clear from the record and the argument of the union that second show cause notice was ever issued to the concerned workman before passing the order of punishment of dismissal which is of course direct violation of the mandate of the Hon'ble Apex Court this respect. However, I am of the considered view that the punishment of dismissal for an unauthorized absence for about four months under the compelling circumstance and without any malafide intention is not just and proper rather it is too harsh a punishment which is totally disproportionate to the alleged misconduct. Such a simple case should have been dealt with leniently by the management. In this view of the matter I think it just and proper to modify and substitute the same exercising the power under Section 11(A) of the Industrial Disputes Act, 1947 to meet the ends of justice and as such the impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of the service and in the light of the prevailing facts, circumstance and the misconduct for which the punishment of dismissal was imposed on the workman concerned I think it appropriate that the delinquent employee be imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman will be entitled to get only 50% of the back wages which will serve the ends of justice. Accordingly it is hereby.

ORDERED

That let an "Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Ministry of Labour, Govt. of India, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 11 जुलाई, 2007

का.आ. 2142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पेशद (संदर्भ संख्या 1/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

[सं. एल-22012/135/2003-आई.आर.(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 11th July, 2007

S.O. 2142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2004)

of the Central Government Industrial Tribunal-cum-Labour Court, Asansol, as shown in the Annexure in the Industrial Dispute between the management of Shyam Sunderpur Colliery of ECL and their workman, received by the Central Government on 11-07-2007.

[No. L-22012/135/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL.

PRESENT

Sari Md. Sarfaraz Khan, Presiding Officer

Reference No. 1 of 2004

PARTIES: The Agent Shyam Sunderpur Colliery of
E.C.L. Burdwan.

Vs.

The Jt. General Secretary, Ukhra Colliery
Mazdoor Union, INTUC Cinema Road, Ukhra,
Burdwan.

REPRESENTATIVES

For the Management : Sri P. K. Das, Advocate.

For the union (Workman) : Sri M. Mukherjee, Advocate

INDUSTRY : COAL. STATE : WEST BENGAL.

Dated the 26-06-2007.

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India, through the Ministry of Labour vide its letter No. L-22012/135/2003-IR (CM-II) dated 23-12-2003 has been pleased to refer the following dispute for adjudication by this Tribunal

SCHEDULE

"Whether the action of the management of Shyamsunderpur Colliery under Bankola Area of M/s. Eastern Coal fields Ltd. in dismissing Sri D. P. Patra, Pit Clerk from service is legal and justified? If not, to what relief is workman entitled?"

On having received the Order No. L-22012/135/2003-IR (CM-II) dated 23-12-2003 from the Govt. India, Ministry of Labour, New Delhi, for adjudication of the dispute, a reference case No. 1 of 2004 was registered on 05-01-2004 and accordingly an order to that effect was passed to issued notices to the respective parties through the registered post directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of said order notices by the registered post

were sent to the parties concerned. Sri P. K. Das, Advocate and Sri M. Mukherjee, Advocate appeared in the Court along with a letter of authority to represent the Management and the Union respectively and union filed its written statement in support of its respective claims.

From the perusal of the record it transpires that the record was filed for filing the written statement by the side of the Management. It is further clear from the record that petition has been filed on behalf of the workman concerned stating therein that the workman concerned has been suffering from various ailments and due to shortage of money he is not in a position to get himself treated properly as the P.F. Account, gratuities etc. has not been disbursed by the management on the plea of pendency of the instant reference. It is further stated that the workman concerned is not willing to proceed further with this case so he wants to withdraw his case so that his terminal benefit may be disbursed by the management.

In view of the above facts and circumstance of the workman concerned is allowed to withdraw his case and the management is directed to disburse his P.F. account, gratuity and other dues if any at the earliest so that the workman concerned can meet all the necessary expenditure regarding his treatment. And such it is hereby

ORDERED

that let a "No Dispute Awarded" be and the same is passed. Send the copies of the award to the Government of India Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed off in the light of the prayer of the workman concerned.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

क्र.आ. 2143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लि. के प्रबंधकों के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्विष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक अधिकरण, श्रम न्यायालय (मुम्बई के पंचाट (संदर्भ संख्या Camp. No. NTB-2 of 2004/ Arising out of Ref. No. 1/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

[सं. एल-20013/2/2007-आई.आर.(सी-1)]

स्नेह लता जावास, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. Comp. No. NTB-2/2004/Arising Ref. No. NTB 1/90) of the National Industrial Tribunal-cum-Labour Court, Mumbai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India

Ltd. and their workman, received by the Central Government on 11-07-2007.

[No. L-20013/2/2007-IR (C. 1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI PRESENT

Justice Ghanshyam Dass, Presiding Officer

Complaint No. NTB-2 of 2004

(Arising out of Ref. No. NTB-1 of 1990)

PARTIES: Capt. Vikrant Sansare - Complainant

Vs.

Air India Ltd. : Opp. Party

APPEARANCE

For the Complainant : Absent

For the Opp. Party : Shri N. S. Lal, Advocate

STATE : Maharashtra

Mumbai, dated the 28th day of June, 2007.

AWARD

1. Captain Vikrant Sansare, Senior Captain, Air India Ltd, General Secretary, Indian Pilots guild has moved the instant application under section 33(A) of the Industrial Disputes Act for the following reliefs.

- (A) To quash and set aside the impugned order/direction of the Opposite party dated 3-8-2004, threatening the complainant with dismissal.
- (B) Pending the hearing and final disposal restrain the Opposite Party by an injunction from carrying out his threat of dismissing the Complainant or taking any other action against him.
- (C) For Interim/Ad-Interim Reliefs in the terms of prayer clause (b).

2. The matter remained pending for hearing for the last about 3 years. The order sheet goes to show that the complainant absented himself since the filing of the complaint. The notice was issued by the Office of the Tribunal and in pursuance thereof, Mr. C. J. Joneson, Adv. appeared for the Complainant on 15-5-2007. The matter was adjourned on his request to 06-6-2007. None appeared for the complainant on 6-6-2007. The matter was posted for ex parte hearing on 28-6-2007 i.e. today. None appeared for the Complainant today also. The Counsel for the Management Shri. N. S. Lal, Adv. for the Management is present.

3. After going through the record, I find that the Complainant does not appear to be interested in prosecuting his complaint. I do not find any evidence worth the name to grant the relief prayed for by the Complainant.

4. The complaint is accordingly dismissed.

JUSTICE GHANSHYAM DASS, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

AWARD

क्र.आ. 2144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार सी.एम.पी.डी. आई.आर.आई. के प्रबंधकों के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचकट (संदर्भ संख्या 120/2001) को अन्तर्गत करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल-22012/264/1993-आई.आर. (से-II)]

अजय कुमार गौर, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CMPDIRI and their workman, which was received by the Central Government on 17-7-2007.

[No. L-22012/264/1993-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR

PRESENT:

Shri N. K. R. Mohapatra,
Presiding Officer, C.G.I.T.-cum- Labour Court,
Bhubaneswar.

Tr. Industrial Dispute Case No. 120/2001

Date of Passing Award—26th June, 2007

BETWEEN

The Management of the Regional Director,
CMPDIRI, VII, 4th & 7th Floor, Gruha Nirman Bhawan,
Sachivalaya Marg, Bhubaneswar.

... 1st Party-Management

And

Their Workmen, represented through the Branch Secretary
& C.C. Member, NCOEA, Co. CMPDIRI, VII, Gruha Nirman
Bhawan, Sachivalaya Marg, Bhubaneswar.

... 2nd Party-Union.

APPEARANCES

M/s. Somadarsan Mohanty, : For the 1st Party-
Advocate. Management.

M/s. R.K. Bose, : For the 2nd Party-
Advocate. Union.

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/264/93-IR(C-II), dated 30-4-1997 :—

“Whether the action of the Management of Central Mines Planning & Design Institute Limited (CMPDIL) in not regularizing the services of Shri Gokul Ghadei, Ganesh Chandra Naik, Purna Chandra Ghadei and Madhab Naik, casual workmen is legal and justified? If not, to what relief are the workmen entitled and from which date?”

2. The shortly stated case of the Union as narrated in the Statement of Claim is as follows :—

The Management of C.M.P.D.I.-RI-VII, (hereinafter called as Management) came into being at Bhubaneswar in August 1987 as a subsidiary company of the Coal India Ltd. to act as an in house consultant to the department of Coal. Initially the said Management started functioning in a private rented building and thereafter it shifted in 1988 to 4th, 5th, 6th and 7th Floor of a building of Orissa State Housing Board on lease basis. The total carpet area of these floors being about 20,000 Sq. ft. it engaged the disputants as Sweepers and after the sweeping work is over utilized their services in other minor works giving them an assurance that they would be regularized in due course of time. As they were paid considerably low wages much below the salary of a regular sweeper, these workmen made several representations in their individual capacity as also through the Union in question demanding regularization of their services. About four years after their engagement the Management having succumbed to the demand of the Union issued a letter on 31-3-1992 appointing these workmen as casual sweepers for a period of 90 days only with effect from 1-4-1992 on a consolidated wage of Rs. 75/- per day and thereafter having terminated them on expiry of the term again engaged them as before paying a paltry amount. As the work performed by these workmen was perennial in nature and they were being continuously engaged without regularization ever since the establishment of the Management, the Union raised an Industrial Dispute. The Government of India initially did not like to refer the matter to the Tribunal, but pursuant to a direction of the Hon'ble High Court in O.J.C. 761/94 it subsequently referred the matter. Hence this reference.

3. The Management on the other hand has averred that office sweeping work being of 2 to 3 hours job, one Gokul Ghadei (one of the disputant-workman) was engaged as a part time sweeper when the office-establishment of the Management first came into being in 1987. The said Gokul Ghadei for his own purpose engaged three others (meaning the other disputants) for timely cleaning of the

office floor. After the office was shifted to 4th to 7th Floor of a building of State Housing Board (present building) in 1998 the self same Gokul was asked to sweep the floor on part time basis with his workers. While this practice was going on Gokul Ghadei and two of his associates namely Purna Ghadei and Madhab Naik were appointed as casual sweeper for 90 days with effect from 1-4-1992 on condition that they would be terminated on completion of the said term unless extended further. As in the meantime the Coal India Limited, the apex body, imposed restriction on appointment of regular and temporary/casual employees, further extension to these workers could not be given after expiry of 90 days. However the work of sweeping was again given on contractual basis to a self styled firm M/s. Gokul & Brothers run by the disputants. When the management issued a short tender notice calling upon interested bidders to take up the sweeping and upkeep work on contract basis, these disputants preferred O.J.C. 961/94 challenging the tender notice. The Hon'ble Court in their order dated 9-8-96 directed further continuance of these disputants until the disposal of the reference and as such they are continuing till date. In the above back ground it is contended by the Management that the above engagement of the disputant being partially part-time, partially casual and then contractual and then High Court order oriented they are not entitled to claim regularization, their casual appointment from 1-4-1992 onwards and prior to that not having been made in accordance with the recruitment procedure.

4. On the basis of above pleadings of the parties the following three issues were framed.

ISSUES

1. Whether the Industrial Dispute is maintainable?
2. Whether the workmen are entitled to any order of regularization?
3. To what other relief, if any?

5. The Union has examined its Branch Secretary as its sole witness while the Management has examined two of its officers. Both parties have also filed a good number of documents in support of their respective stands.

ISSUE NO. 1

6. This issue is answered affirmatively there being no substantial challenge to the same by either party.

ISSUE NO. 2 & 3

7. These issues being inter-related are taken up jointly.

The Union has produced as many as 37 documents marked as Ext.-1 to 37. These includes correspondences, office orders, memorandum of settlements, short-tender notice issued by the Management, copy of payment

voucher, judgement of the Hon'ble High Court in O.J.C. 761/94 etc.

8. The Management has also produced equal number of documents marked as Ext.-A to Wand AA to HH and X and XII. These documents include correspondence with the higher authorities, representation of the disputants, copy of the office notes, appointment letters issued to three of the workmen for a period of 90 days, joining report of these disputants, Attendance register, vouchers granted by workman Gokul, quotation given by M/s. Gokul Ghadei & Brothers etc.

9. It may be stated at the very outset that except the oral evidence of W.W.1 no document has been filed by the Union as to under what conditions these disputants were first engaged when the establishment of the Management came into being admittedly for the first time in 1987. From a letter of the Management (Ext.-1) addressed to its higher authority it appears that disputant Gokul Ghadei was alone engaged first on part time basis as he was found working on self same basis in another neighbouring establishment of one S.E.C.L. and to manage his entire work the said Gokul in turn had engaged the other three disputants to sweep the office floors of the Management. Later when the office of the Management was shifted to the present building the Management diverted one such worker to attend their rest house situated in a different place asking Gokul Ghadei alone to sweep the floors of the 4th to 7th Floor of the office building to which it was shifted. The said Gokul used to clean the floor along with two other persons namely Purna Chandra Ghadei and Madhab Naik (other two disputants) on a fixed sum settled on bargain. The said Gokul used to take his dues at the end of the month through vouchers. The documents produced by the parties show that Shri Gokul used to receive his fees @ Rs. 15 per day per person when the minimum wage fixed by the State Govt. was something more than that suggesting that the workman Gokul was simply given a part time job of two to three hours for cleaning the floors alone. In his evidence the Branch Secretary of the Union (W.W.1) has claimed that all these four workmen of whom three were engaged in the office building and another in the rest house, were working from 6 A.M. to 2 P.M. daily as they were engaged on other duties after the sweeping work was over. But to substantiate the same no documents worth the name has been produced nor any of the disputants have been examined to throw sufficient light as to how they were kept engaged from 6 A.M. to 2 P.M. On the other hand the office notes marked as Ext.-B shows that time and again the sweeping charges payable to Gokul was enhanced on his own representation and it were received by Gokul himself on behalf of his self styled firm M/s. Gokul & Brothers. This he used to receive until himself and disputant Purna and Madhab were given appointments as casual sweepers for 90 days from 1-4-1992 vide Ext.-F, G and H suggesting that their previous engagement was on part time basis as claimed by the Management.

10. It is contended by the Union Witness (W.W.-1) that as per Clause 11.5 of the National Coal Wage Agreement-IV (Ext.-27) no employer is permitted to engage contractors on jobs of permanent and perennial in nature. Sweeping business being a work of above nature the past engagement of workman prior to their 90 days appointment as casual workers is to be taken into account while considering their case for regularization. In this regard it may be pointed out that no doubt under the above agreement the Management is prevented from engaging contractors or labourers through contractors on job of permanent and perennial nature. But such restrictions of not engaging contractors are only applicable to those type of work which needs to be attended continuously in a cyclic manner round the clock. The work of sweeping may be permanent but it cannot be said perennial unless it is shown that such sweeping activities are needed throughout the entire working hours. In other words a distinction can be drawn between the duty of a Sweeper engaged in a mining area and the duty performed by a sweeper in an office building. In the former case sweeping business may be both perennial and permanent but in the latter case the sweeping of office floor can only be considered as permanent but not both permanent and perennial.

11. In the instance case there is evidence on record that besides having its office located in a rented multistoried building the Management had taken another house on rent in another place to provide accommodation to those of the junior officers who did not intend to hire separate houses. Except these two building it had no other residential quarters or other places requiring sweeping and cleaning in a permanent and perennial basis. From a letter of the Management (Ext.-1) which has been marked from the side of the Union it appears that of the four disputants one was asked to attend the building meant for Junior Officer's accommodation while the remaining three were sweeping the office building in question being engaged by workman Gokul. As normally sweeping work is to be completed before office hours, it squarely suggests that the disputants could not have been engaged for eight hours a day. Since the concerned workman have not come forward to depose before the Court and as their witness (W.W.-1) has failed to account for as to what other work besides sweeping was entrusted to these disputants to keep them engaged up till 2.00 P.M. everyday, it can safely be concluded that these disputants were engaged on part-time basis as claimed by the Management prior to their appointment as casual sweepers with effect from 1.4.1992. This has gained support from the narration of Ext.-1 which indicates that while these disputants were working on part time basis in a nearby establishment they were contacted and engaged alike-wise when the establishment of the Management came first into being in 1987. The evidence of the Management witness read with the narration of Ext.-1 and other documents make it further clear that the part-time job of

sweeping was entrusted to the disputant, Gokul Ghadei alone but he used to take the assistance of other disputants to clean the office floors when he was contacted first in 1987. The evidence of the Management Witness further indicates that these persons by devoting two to three hour daily use to sweep the office building in question before the office hour and for this Gokul Ghadei used to receive the entire dues in the name of Gokul & Brothers. Therefore in these premises the work done by these disputants cannot be considered as one of permanent as well as perennial in nature so as to attract the provisions of the National Coal Wage Agreement - IV.

12. It is on record (Ext.-2) that while the workmen were working in the above manner, the Union raised a demand in its letter dated 10.1.1992 for regularization of these disputants. Over this issue the Dy. Chief Manager stationed at Ranchi called for reports from the Management and in a later stage three of the disputants namely Gokul Ghadei, Purna Chandra Ghadei and Madhab Naik were given temporary appointment for 90 days with effect from 1.4.1992 on condition that their engagement was terminable on expiry of such period unless extended further. The documentary evidence produced by both parties shows that after termination of these disputant on expiry of the above term, the Union came up heavily demanding their regularization, which resulted in various meetings between the Management and the Union but to no effect. In the meantime the Management also asked for leave of higher authority to give them further engagement and at the same time invited applications through Employment Exchange for filling up two posts that were sanctioned later. But in view of the recruitment restrictions imposed by the Coal India Ltd. these posts could not be filled up. The record indicates that after the above termination in July 1992 workman Gokul having agreed to work as before gave a proposal on behalf of M/s. Gokul & Brothers to work on an agreed rate of Rs. 80 per day each (three persons) vide Ext.-9 dated 1-8-1992 and took up the work. While this being the position the Management on 8-5-1996 issued a short tender notice calling interested bidders to take up general up-keep work on contract basis. In the meanwhile the Central Government did not like to refer to the Tribunal the dispute which the Union had raised before the Labour Enforcing Authority. This order having been challenged in O.J.C. 761/94 the Hon'ble Court in their order dated 9.8.96 directed the Central Government to refer the matter to Tribunal. At the same time it directed the Management not to take any step to disengage all the four disputants until the reference is answered.

13. From the above it is thus clear that while the three workmen Gokul, Purna and Madhab were working as sweepers of the office building on part time basis they were appointed as casual sweepers for 90 days on stipulation that their engagement would be terminable on expiry of 90 days unless it is extended. It is here argued by the

Union that under the Standing Order casual engagement for 90 or more than 90 days entails a person to claim regularization. On the other hand it was argued by the Management that these persons having not been recruited/selected as per the recruitment process of the company and their 90 days engagement, being as casual worker, they have got no right to claim regularization as per the mandate of the Apex Court given in several rulings. It was further contended that it is outside the purview of the Court/Tribunal to pass an order for regularization of any particular workers.

14. It is no doubt true that a casual employee or daily wagers not selected as per the recruitment rule has got no right to claim regularization. It is equally true that the hands of the Tribunal are tight to pass any order directing regularization of any such workers. But if the Standing Order of an industry contains a provision for regularization of such workers, in my opinion, the same would prevail all over. The Standing Order of the Management a portion of which has been marked as Ext.-26 shows the classification of different workers. According to it a casual workman means a workman who has been engaged for work which is intermittent or sporadic or of casual nature not extending beyond a maximum period of three months at a time he evidence of the Management Witness shows that the above named three disputants were appointed as casual worker for a period of 90 days with effect from 1.4.1992 and they were terminated on 30th July, 1992. This shows that they were not terminated after 90 days but were allowed to continue beyond 90 days. The full text of the Standing Order has of course not been filed by either party so as to enable the Court to examine the real status of casual worker. But the letter of the Central Mine Planning & Design Institute Limited (Ext.-W) indicates that persons engaged as casual workers for more than 90 days acquire a right to claim regularization. It is on record that even while the three workmen were working as casual employees the Management had moved its higher authority for further extension of the term of these three workmen beyond 90 days. It is also on record that after sanction of some permanent posts of sweeper an advertisement was made asking the Local Employment Authority to sponsor the name of suitable candidates and at the same time these three disputants were asked to get their names sponsored through employment exchange. The said recruitment examination could not of course be held due to recruitment ban imposed by the Coal India Authority. But none the less the other correspondence of the Management shows that it was equally interested to provide regular services to these three workmen. The most vital and disquieting aspect of the case as appearing from the evidence is that though these three workmen were given appointment as - casual employees for a period of 90 days with effect from 1.4.1992, they have been terminated in the month of July 1992 i.e. much after 90 days without further extension. This itself

makes the workmen (three in number) entitled to claim regularization as per the Standing Order of the Management.

15. It was argued by the Management that the 90 days contractual engagement of the above disputants not being in accordance with the recruitment procedure they were not entitled for regularization. Be it noted here that when the Management has allowed these workers to continue as casual employees, for whatever reasons it may be, beyond the contractual period of 90 days, they cannot be denied regularization in violation of the Standing Order. The Tribunal no doubt is capsize with its power to direct regularization but a direction to the Management to regularize the disputants namely Gokul, Puma and Madhab would not be bad in the face of a statutory protective clause given under the Standing Order. But in so far as the case of the 4th disputant Shri Ganesh Ch. Naik is concerned except a thin line of evidence of the Union that he was also working continuously like other three, there is not a scrap of paper to show that like the other three he was also given a contractual appointment as casual workers for a period of 90 days and above. Therefore in these circumstances he declared not entitle for any relief.

16. Thus to sum up, the Management is directed to regularize the services of the workman Gokul, Puma and Madhab in accordance with its Standing Order within six months from the date of receipt of the order and subject to the reservation norms. They would ofcourse not be entitled for any back wages and other benefits except continuity of service from 1-4-1992.

17. Accordingly the reference is answered.

N. K. R. MOHAPATRA, Presiding Officer

List of witnesses examined on behalf of the workmen

Workman Witness No. 1- Shri Bijaya Bihari Padhi.

List of witnesses examined on behalf of the Management

Management Witness No.1 - Muhammed Yusuf Anwar, Management Witness No.2 - Birendra Prasad Singh

List of exhibits on behalf of the 2nd party-workman

Ext.-1 - Copy of letter dated 21-1-92.

Ext.-2 - Copy of letter dated 27/28-1-92.

Ext.-3 - Copy of letter dated 14-2-92.

Ext.-4 - Copy of letter dated 1-7-92.

Ext.-5 - Copy of note dated 21-7-92.

Ext.-6 - Copy of letter dated 19-8-92.

Ext.-7 - Copy of letter dated 26-8-92.

Ext.-8 - Copy of letter dated 20-11-92 (Two Sheets)
 Ext.-9 - Copy of letter dated 29-8-92.
 Ext.-10 - Copy of bill dated 12-11-98.
 Ext.-11 - Copy of bill dated 9-12-98.
 Ext.-12 - Letter dated 21-9-92.
 Ext.-13 - Copy of Transfer Certificate dated 25-10-88.
 Ext.-14 - Copy of Caste Certificate issued in Misc. Case No. 406/82.
 Ext.-15 - Copy of Transfer Certificate dated 18-4-91.
 Ext.-16 - Copy of Caste Certificate issued in Misc. Case No. 1197/91.
 Ext.-17 - Copy of Transfer Certificate dated 11-11-88.
 Ext.-18 - Copy of Caste Certificate in Misc. Case No. 1186/88.
 Ext.-19 - Copy of the letter No. 7467 dated 19/24-2-93 regarding regularization of Shri G.C. Nayak and Others.
 Ext.-20 - Copy of the letter dated 14-8-92 regarding sanction for engagement of casual sweepers.
 Ext.-21 - Copy of the certified letter dated 27-8-92 regarding engagement of sweepers.
 Ext.-22 - Copy of the charter of demands dated 17.8.92.
 Ext.-23 - Copy of the letter dated 16.12.92 of the Association for discussion on the Issues.
 Ext.-24 - Copy of the minutes of the meeting held on 9-2-93.
 Ext.-25 - Copy of the minutes of the meeting held on 30-7-93.
 Ext.-26 - Copy of the Standing Order (6 sheets).
 Ext.-27 - Copy of the memorandum of agreement dated 27-7-89 (5 pages).
 Ext.-28 - Copy of the letter dated 10-12-92 sent to the Asst. Labour Commissioner.
 Ext.-29 - Copy of notice dated 22-12-92 asking for furnishing comments in the dispute.
 Ext.-30 - Copy of comments furnished in the dispute.
 Ext.-31 - Copy of minutes of discussion held on 11-2-93.
 Ext.-32 - Copy of Memorandum of Settlement dated 24-6-91.
 Ext.-33 - Copy of Short Tender Notice dated 8-5-96.
 Ext.-34 - Copies of Vouchers (4 sheets).
 Ext.-35 - Copy of the order dated 30-3-93 passed by the Industrial Court, Nagpur.

Ext.-36 - Copy of the notification dated 9-12-76.
 Ext.-37 - Copy of the order dated 9.8.96 in O.I.C. No. 761/94 (11 sheets).
List of Exhibits on Behalf of the 1st Party Management :
 Ext.-A - Copy of letter dated 10-1-90.
 Ext.-B - Copy of note dated 10-1-90.
 Ext.-C - Copy of note dated 11-1-91.
 Ext.-D - Copy of note dated 21-3-92.
 Ext.-E - Copy of letter dated 30-3-92.
 Ext.-F - Copy of letter dated 31-3-92.
 Ext.-G - Copy of letter dated 31-3-92.
 Ext.-H - Copy of letter dated 31-3-92.
 Ext.-I - Joining report dated 1-4-92.
 Ext.-J - Caste Certificate dated 29-12-92.
 Ext.-J/2 - Identity Card dated 26-4-91.
 Ext.-K - Joining Report dated 1-4-92.
 Ext.-K/1 - Caste Certificate dated 12-9-91.
 Ext.-K/2 - Identity Card.
 Ext.-L - Joining Report.
 Ext.-L/1 - Caste Certificate dated 29-12-88.
 Ext.-M - Copy of extract of attendance register.
 Ext.-N - Copy of note dated 1-7-92.
 Ext.-O - Copy of letter dated July 1992.
 Ext.-P - Copy of letter dated 31-7-92.
 Ext.-Q - Copy of letter dated 1-8-92.
 Ext.-R - Copy of letter dated 5-8-92.
 Ext.-S - Copy of letter dated 28-8-92.
 Ext.-T - Copy of quotation dated 29-8-92.
 Ext.-U - Copy of note sheet dated 2-9-92.
 Ext.-V - Copy of letter dated 7-9-92.
 Ext.-W - Copy of letter dated 16-9-92.
 Ext.-AA - Copy of note sheet dated 24-9-92.
 Ext.-BB - Copy of letter dated 29-10-92.
 Ext.-CC - Copy of note sheet dated 23-11-92.
 Ext.-DD - Copy of letter dated 24-11-92.
 Ext.-EE - Copy of letter dated 14-12-92.
 Ext.-FF - Copy of bill dated 1-3-93.
 Ext.-GG - Copy of letter dated 31-3-93.
 Ext.-HH - Copy of bill dated 2-3-94.
 "X" - Copy of Letter No. 793, dated 5-12-2002, 16/18-7-98 of CMPDI (Sr. PO)
 "XT" - Copy of reply dated 25-7-98 of Gogul Ghadei to Sr. PO, CMPDI.

नई दिल्ली, 17 जुलाई, 2007

क्र.आ. 2145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार तारापुर एटॉमिक पावर स्टेशन के प्रबंधन के संबद्ध नियोक्कों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, मुम्बई के पंचाट (संदर्भ संख्या CGIT-2/37 of 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल 42012/292/2003 आई आर (सीएम-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT 2/37 of 2004) of the Central Government Industrial Tribunal-cum-Labour Court. No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Tarapur Atomic Power Station, and their workmen, received by the Central Government on 17-7-2007.

[No. L-42012/292/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT : A.A. Lad, Presiding Officer

Reference No. CGIT-2/37 of 2004

Employers in relation to the Management of Tarapur
Atomic Power Station

The General Manager (P & IR)
Tarapur Atomic Power Station
PO, Tapp Dist. Thane
Thane-401501.

AND

The Workmen
Shri Rajendra R. More
At. Poptar
PO Dharai
Taluka Palghar
Dist. Thane

APPEARANCES

For the Employer : M/s. Rajesh Kothari & Co.
Advocates

For the Workman : Mr. V. J. Amberkar
Advocate

Mumbai, dated 15th June, 2007

AWARD

The Government of India, Ministry of Labour, by its order No. L-42012/292/2003/IR (CM-II) dated 18-8-2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Tarapur Atomic Power Station, District Thane in dismissing the services of Mr. Rajendra R. More, Helper with effect from 8-6-1996 is legal and justified? If not, to what relief the workman is entitled?"

2. Claim Statement is filed as Ex-8 by workman stating that he was employed by first party as a Helper since 1991 as per the letter issued. Said employment was with first party upto 4-4-91. Thereafter he was regularised in the employment as per demand of the Union as a daily rated employee from 5-4-1991 till 8-6-96.

3. On 14-8-95 he was given pay scale of Rs. 750-12-870-14-940. Thereafter he was terminated on 8-3-96 giving effect from 8-6-96 without any notice and any reason. By letter dated 20-4-2003 he questioned the said action and requested to regularise him in the employment.

4. He states that, he was arrested by Police on false complaint given by one lady. Actually he was not concerned with that lady who leveled false charge of misconduct against him. Only because second party arrested and charge sheeted by police and without holding enquiry and without giving opportunity to explain upon the said, he was terminated though he was acquitted from the said complaint by the Session Judge, Palghar. So he prayed that, action taken by first party dated 8-3-96 be quashed and set aside with direction to first party to reinstate him in the employment with continuity of service.

5. This is objected by first party by filing reply at Ex-11 stating that, he was appointed on probation on 8-3-96 and during the probation period he was terminated. He kept silent for about six years and prayed for reinstatement though he got acquitted from the Session Court regarding criminal case pending. Initially he was taken as a casual worker and worked from 1983 to 1994 for number of days as mentioned in para 3 of Written Statement. Then he was selected and appointed on probation. During the probation his work found unsatisfactory so he was terminated. Moreover termination dated 8-6-96 was challenged by him in 2002 by application with ALC (C). No explanation was given as to why he was late in approaching Conciliation Officer. So on all these counts, claim made by second party deserve to be reject.

6. In view of above pleadings issues were framed at Ex-16 which are answered as follows :

| ISSUES | FINDINGS |
|--------------------------------------|-----------------------------|
| 1. Is termination justifiable? | No. |
| 2. Is he entitled for reinstatement? | Yes, but without backwages. |
| 3. What Order? | As per order below. |

REASONS

Issue no. 1 :—

7. Termination dated 8-6-96 is challenged by second party alleging that, without following due process of law and without hearing him by giving charge sheet and by holding enquiry, he was terminated said decision of the first party is illegal. Whereas case of the first party is that, since he was appointed on probation and his work found unsatisfactory he was terminated in probation period for which enquiry does not require or any explanation from the workman.

8. First party place reliance on the citation published in 2003 (III) SCC page 263 where it is observed that, if employee terminated during probation period, on unsatisfactory performance, does not attract any stigma. Here this case is on the point of stigma on the employment of the concerned workman but here second party who is involved in the reference was terminated. As per Industrial Disputes Act it is not justifiable and it is not even observed in that angle in the said observations. Same view is taken in the citation published in SCC (I) 520 where it is not clear whether probationer can be terminated in Industrial Disputes Act without giving opportunity to hear the employee on the charges. Citation published in 2000 (v) SCC 152 observed that probationer has no right to be reinstated on the same post again. In the said case provision of Industrial Disputes Act are not discussed and observed does not require any enquiry while terminating employee who is on probation. Against that citation produced by second party published in 1970 ILLJ page 454 SC reveals that, termination of the employee who is in probation if done without show cause and holding enquiry it is observed that, it is not just and legal. It is further observed that, if such a termination is challenged before Tribunal by employee who was on probation without holding enquiry and without hearing him in that case, Tribunal can consider the validity of order of termination and can see whether any reason is assigned in terminating the employment. So ratio laid by Apex Court while deciding case of Brokebond Vs I.K. Gautam supra observed that, when employee is on probation does not give blanket right to the employer to

terminate the employee during probation without holding an enquiry.

9. Admittedly there was no chargesheet and no enquiry. Admittedly no explanation was sought from second party for what he was terminated and what was in the mind of first party in terminating the second party. It appear that on the basis of arrest in Session Case pending against him in 'Palghar Court' he was terminated. The case of the second party is that he was acquitted by Palghar Session Court and that fact is not disputed by first party. So this reveals that, on the so called complaint first party set upon and decided to terminate his employment which is not just and proper. What ever may be in the mind of first party about second party, it must convey it to him and sought explanation and thereafter can take action. But here no opportunity of that type appears given and simply first party safely rely on the prosecution of the second party and decided to terminate during his probation observing his work was not satisfactory. Moreover nothing is stated about his work. No specific event is mentioned by which it can be observed that work of second party was not satisfactory. No any case is projected except so called criminal case and reason behind his termination. So all these reveals that, first party took law in its hand and decided to terminate his employment which is not just and legal. It is noted that, this employee is protected by provision of Industrial Disputes Act. His services are governed by the provision of Industrial Disputes Act. In this scenario the action taken by first party if considered, one will have to conclude that, it was not legal and just. So, I observe that, termination is not justifiable as well as legal one.

Issue nos. 2 & 3 :—

10. Second party claim reinstatement with continuity of service. First party challenge it saying that, he approached after 6 years from termination which is not just and legal.

11. The case made out by second party that, his criminal case was decided on merit on 8-4-2002 whereas he was terminated on 8-6-96. Besides reason of termination is a prosecution going on against second party in Palghar Sessions Court. So definitely when second party got a clean chit about his so called charges, it might inspire him to approach for employment in which in my considered view it is not unjust or against the common sense of the common man. When he got clean chit from the Court on 8-4-2002 which is not disputed and challenged by first party, definitely he might have considered about his employment and accordingly he approached Tribunal. So in my considered view delay caused is explained by second party saying that he was acquitted on 8-4-2002. So his approach in 2002 against the termination of 1996 is justified.

12. It is matter of record that, he did not work with first party from 8-6-96. First party is a Research Institution

which is dealing with nuclear power. It is a public body run in the interest of public. When second party did not work for first party from 1996 in my considered view, he is not entitled for backwages.

13. As observed above, decision taken by first party of termination without enquiry and without issuing charge sheet is not just and legal. Moreover the so called charges levelled against him were discharged by the competent court. So all that permits second party to claim employment with first party but with no other ancillary benefits. Accordingly I answer above issues and passes the following order:

ORDER

1. Reference is partly allowed.
2. First party directed to reinstate second party Shri Rajendra. R. More as Helper within three months from the order of this Tribunal and go on paying him his wages on the basis of his last pay drawn when terminated.
3. Prayer of second party to give continuity in service and other ancillary benefits like backwages are rejected.

Date: 15.06.2007

A. A. LAD, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

का.आ. 2146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबद्ध नियोक्ताओं और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट (संदर्भ संख्या 58/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल. 22012/355/2004-आई आर (सीएस-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 17-7-2007.

[No. L-22012/355/2004-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ASANSOL

PRESENT

Sri Md. Sarfaraz Khan, Presiding Officer

Reference No. 58 of 2005

Parties: The Agent, J.K. Nagar Colliery of E.C.L.
Bidhanbag, Bardwan

Vrs

The General Secretary, Koyala Mazdoor
Congress, Asansol, Bardwan

REPRESENTATIVES

For the management : Sri P.D. Das, Advocates

For the union (Workman) : Sri S.K. Pandey, General
Secretary, Koyala Mazdoor
Congress, Asansol.

Industry : Coal State : West Bengal

Dated the 24-11-2006

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 19 of the Industrial Disputes Act, 1947 (14 of 1947) Government of India through the Ministry of Labour vide its letter No. L-22012/355/2004-IR (CM-II) dated 21-7-2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of J.K. Nagar Colliery under Satgram Area of M/s. ECL in dismissing Sri Babul Majhi, Electric Helper from service w.e.f. 29-12-1992 is legal and justified? If not, to what relief the workman is entitled and from which date?"

After having received the Order No. 22012/355/2004-IR(CM-II) dated 21-07-2005 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication a reference case No. 58 of 2005 was registered

on 17-08-05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were issued to the parties concerned. Sri P.K.Das, Advocate and Sri S.K.Pandey, General Secretary of the union appeared in the Court along with a letter of authority to represent the management and the union respectively. The written statement on behalf of the union was filed but in spite of several adjournments and direction no written statement was filed on behalf of the management and ultimately the case was fixed for final hearing.

2. In brief compass the case of the union as set forth in its written statement is that Sh. Babui Majhi, was a permanent employee of the company as Electric Helper at J.K.Nagar Colliery under Satgram Area of M/s. Eastern Coalfields Limited. The main case of the union is that the delinquent employee absented from his duty w.e.f. 23-6-1992 to 14-8-1992 due to his sickness for which he was charge sheeted vide charge sheet No. ECL/JKN/PER/92/4285 dated 14/17-8-92. After being declared fit the workman concerned reported to the management for resumption of his duty but he was not allowed. It is also the case of the union that the workman concerned replied to the charge sheet and appeared before the enquiry officer and submitted his sick certificate etc. for the perusal of the enquiry officer but surprisingly enough the workman was dismissed from the service of the company on 29-12-1992 by the General Manager, Satgram Area. The workman along with his union tried their level best to pursue the management for his reinstatement but to no effect and his issue was kept pending for years together without any decision.

3. It is also the claim of the union that the delinquent employee is sitting idle without any job from the date of dismissal and his whole family is on the verge of starvation. The dismissal of the workman concerned from the service of the company is claimed to be illegal and unjustified. The union has sought a relief for the reinstatement of the workman concerned on the service after setting aside the order of the dismissal passed by the management together with the payment of the full back wages and all the consequential benefit.

4. From the perusal of the order sheets of the record it transpires that right from the date 14-10-05 to 15-9-06 several adjournments and direction by way of last chance for filing the written statement were given to the management but to no effect and ultimately the case was fixed for

final hearing. It is further clear from the record that some Xerox copies of the documents have been filed by the side of the union in support of its claim. The copy of the charge sheet, enquiry proceedings, enquiry report, medical certificate, dismissal order and copies of representation dated 18-8-1993 and 18-6-98 addressed to the G.M., Satgram Area have been filed in the court.

5. Keeping in view of the pleadings of the union and the material available in the record I find certain facts which are admitted one.

6. It is the admitted fact that the workman concerned Sh. Babui Majhi was in the employment of the company as Electric Helper at J.K. Nagar Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It is also admitted that the delinquent employee was absent from his duty w.e.f. 23-6-92 to 17-8-92 without any leave or prior permission and without any information to the management and accordingly he was charge sheeted for his unauthorized absence from duty.

7. It is also directly or indirectly admitted case that the workman concerned never reported before the colliery management during the entire period of absence nor any written intimation stating the reason of his absence was submitted by the delinquent employee to the management.

8. It is obvious from the record, enquiry proceeding and its finding that Sri Bhaital Hela and Bansurpon Chowdhury the management representative were examined before the Enquiry Officer who has categorically supported the fact that the delinquent employee was absent during the relevant period without information/authorized leave which is admitted by Babui Majhi, the workman concerned in his statement before the enquiry officer.

9. Having gone through the entire facts, circumstance, enquiry proceeding and its findings I am satisfied to hold that the workman concerned was admittedly absent from his duty during the relevant period continuously without any sanctioned leave, prior permission or information to the management. The Enquiry Officer has rightly held him guilty for the alleged charge of unauthorized absence w.e.f. 23-6-92 to 17-8-92 and in view of the prevailing facts the delinquent employee deserves some suitable punishment for the alleged proven misconduct as per the provision of the Model Standing Order applicable to the establishment.

10. Now the only main point in issue for consideration before the court is to see as to how far the punishment of dismissal awarded to the workman concerned by

the disciplinary authority is just, proper and proportionate to the alleged proven nature of misconduct.

11. Heard both the parties on the points in issue. It was submitted by the union that it is a simple case of an unauthorized absence for about two months only and the absence from the duty during the relevant period is duly explained and the reasons of absence supported with treatment papers and medical certificate is relevant and satisfactory. The enquiry officer has also not whispered even a word that the reason of unauthorized absence was without any satisfactory reasons.

12. It was further submitted that the workman concerned has got unblemish record during the service tenure and there has not been any complain of any misconduct against the workman concerned. The management has also not been able to prove the charges of habitual absenteeism and no chit of paper in this regard has been filed in the court. So it can be easily concluded that it is the first offence of the workman which has been sufficiently explained and supported by the medical certificate indicating the compelling circumstance beyond the control of the workman.

13. In course of argument it was also submitted that a simple case of unauthorized absence for about two months can not be said to be a gross misconduct and in this context the attention of the court was drawn towards the provision of the Model Standing Order where the extreme punishment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty can not be imposed upon the workman in such a minor case of alleged proven misconduct of an unauthorized absence. The submission of the union has got much force and reasonably convincing.

14. It has been several times clearly observed by different Hon'ble High Courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disciplinary authority to consider socio-economic back ground of the workman, his family back ground, length of service put in by the employee, his past records and other surrounding circumstances including the nature of misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which must have to be kept in mind by the authority at the time of imposing the punishment which of course has not been done by the authority in this case.

15. No doubt the workman concerned is an illiterate man of the weaker section of the society who is admittedly financially weak and poor who has suffered a lot for more than ten years for a minor misconduct of unauthorized

absence for about two months under the compelling circumstance beyond his control. It is clear that there is no charge of habitual absenteeism proved against him and it is the first offence. Besides this the workman has got unblemish record as no evidence or document has been produced by the management in this regard. The attention of the court was drawn by the union towards the provision of the Model Standing Order laid down under clause 27(1) (page 15) where various minor punishment have been prescribed to be awarded according to the gravity of the misconduct. I fail to think as to why only maximum punishment available under the said clause should be awarded in the present facts and circumstance of the case. It has been observed by the Apex Court that justice must be tempered with mercy and that the delinquent employee should be given an opportunity to reform himself and to be loyal and disciplinary employee of the management.

16. However I am of the view that the punishment of dismissal for an unauthorized absence for about two months under the compelling circumstance and without any malafide intention is not just and proper rather it is too harsh a punishment which is totally disproportionate to the alleged proven misconduct, shocking to the judicial conscience of the court. Besides this as per the directions of the Apex Court no second show cause notice before imposing the punishment of dismissal has been issued to the workman concerned which is the direct violation of the directives of the Apex Court and the principles of natural justice as well. Such a simple case should have been dealt with leniently by the management. In this view of the matter I think it just and proper to modify and substitute the same by exercising the power under Section 11(A) of the I. D. Act, 1947 in order to meet the ends of justice and as such the impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of the service. In the light of the facts, circumstance and the proven misconduct under which the punishment of dismissal was awarded to the workman concerned I think it appropriate that the delinquent workman be imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman concerned will be entitled to get only 50% of the back wages which will serve the ends of justice. Accordingly it is hereby

ORDERED

that let an "Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SAKILRAZ KHAN, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

क्र.आ. 2147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबद्ध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 147/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल-22012/404/1999 आई आर (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2147.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 147/2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of F.C.I and their workmen, which was received by the Central Government on 17-7-2007.

[No. L-22012/404/1999-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

CASE NO. I.D. 147/2000

Shri Bhadur Singh S/o Sh. Tara Singh Village and P.O. Kathunagall Amritsar (Pb.) ...Applicant

Versus

The Dist. Manager, Food Corporation of India, 86, Rani Ka Bagh, Amritsar (Pb.) ...Respondent

APPEARANCES

For the Workman : None

For the Management : Shri N.K. Zakhrani

AWARD

Passed on 4-7-07

Central Govt. vide notification No. L-22012/404/99/IR (CM-II) dated 7-3-2000 has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of Food Corporation of India, Amritsar in terminating of services of Shri Bhadur Singh S/o Sh. Tara Singh w.e.f. 1-1-1997 without paying him any retrenchment compensation is legal and justified? If not, to what relief the concerned workman is entitled and from which date?"

2. Case repeatedly called None has put up appearance on behalf of the workman Shri N. K. Zakhrani advocate for the management submitted that workman petitioner has not appeared on this case despite registered notice for today. He submitted that earlier also in the whole year in 2004 and thereafter on 17-4-06 to 24-5-06, 22-8-06, 8-11-06 at 20-12-06, 28-2-07, 24-5-07 and today 4-07-07 none appeared for the workman. It appears the workman is not interested to pursue his case. He is not responding to the registered notices of the court even. It appears that

workman is gainfully employed some where and not interested to pursue this reference.

3. In view of the above, since the workman is not appearing despite registered notice, no purpose will be served in keeping this case pending. Therefore, the present reference is returned for want of prosecution to the Central Govt. File be consigned to record.

Chandigarh

Dated : 4-7-07

RAJESH KUMAR, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

क्र.आ. 2148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय रेलवे कुर्ला डीजल लोकोमोटिव प्रबंधन के संबद्ध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. II मुम्बई के पंचाट (संदर्भ संख्या 80/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल-41011/43/2002-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2148.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2003) of the Central Government Industrial Tribunal-cum-Labour Court-II Mumbai as shown in the Annexure in the Industrial Dispute between the management of Central Railway, Kurla Diesel Locomotive and their workmen, received by the Central Government on 17-7-2007.

[No. L-41011/43/2002-IR (B-3)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

A. A. Lad, Presiding Officer

Reference No. CGIT-2/88 of 2003

EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL RAILWAY, KURLA DIESEL LOCOMOTIVE

- (1) The Divisional Mechanical Engineer (D) Central Railway Kurla Loco Shed, Kurla Mumbai-400024
- (2) The Divisional Railway Manager Central Railway Mumbai Division, Mumbai CST Mumbai-400001.
- (3) The General Manager Central Railway Mumbai Division, Mumbai CST Mumbai-400001.

AND

Their Workmen

The General Secretary
Indian Railway Technical Staff Association (C.R.)
2, Mahabir Yadav Chawl
Nagar Das Road, Andheri (E)
Mumbai-400058.

APPEARANCES

For the Employer : Mr. Mandeep Sahni,
Representative

For the Workman : Mr. A. B. Mishra
Representative

Mumbai, dated 12th June, 2007

AWARD

The Government of India, Ministry of Labour, by its order No. L-41011/43/2002-IR (B-I) dated 25-11-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication :-

"Whether the action of the General Manager, Central Railway, Mumbai CST and other officials in imposing the punishment of reduction of pay from Rs. 10,500 per month to Rs. 6,500 per month for a period of 5 years with future effect is legal, proper and justified? If not to what relief (including the refund of arrears of pay and recovered Penal Rent and other consequential benefits, etc. alongwith the promotion to the higher post at par with his juniors) Shri A. N. Pandey, Section Engineer (T & C) Diesel Loco Shed, Kuria is entitled for and from which date and what other directions are necessary in the matter?"

2. To support the subject matter referred in the reference, second party place reliance on claim statement filed at Ex-13 stating that, he worked with first party as a Section Engineer Battery Section at Diesel Loco Shed at Kuria. He worked for 18 years continuously. During that period number of charge sheet were served on him as mentioned in para 2.5 of his claim statement. On number of occasions charges levelled against him were exonerated in the inquiry. The present reference is pertaining to last charge sheet dated 15-9-98 where he was not found guilty before Inquiry Officer still management punished him on allegation of subletting Railway Quarters. According to him charges levelled against him in charge sheet was of vague nature. Infact Railway Quarter of Byculia was allotted to him but recovery was made regarding sub letting of Railway Quarter of Mazagaon and at G. T. Nagar from which quarters were not allotted to second party. The case of allegation of sub letting Railway Quarter of Mazagaon is made out but actually Quarter of Byculia was allotted to the second party. It is not explained as to how Railway Quarter of byculia is included in the said list which is not at all related in the enquiry. Besides Inquiry Officer exonerated charges of subletting Railway Quarter still, R.S. Rajoria considered evidence observing charges are proved when second party did not accept the other officer given by R.S. Rajoria to pay Rs. 10,000 to show favour. He complained about R. S. Rajoria to show how he has shown his bias mind and how he ignored the findings of the Inquiry Officer. Besides he was purposely not promoted. Even damages Rs. 57,141 were recovered illegally. So he prayed to recover Rs. 10,500 per month for a period of 5 years. He also prayed to give promotion with instruction to first party with ancillary benefits.

3. This is disputed by first party by filing written statement at Ex-15 stating that, second party is not a

'workman' and as such he is not entitled to raise dispute. Besides it is contended that, he has not exhausted departmental remedies before approaching the Tribunal or Conciliation Officer and on that count also his reference fails. Besides it is contended that he filed recovery application under Section 33 C (2) before NIT-I, Mumbai where he got relief. Even he is promoted as per his claim. But he did not report on promoted place since he was not getting HRA facility which is available at Mumbai. So it submitted that, entire claim of second party does not stand and require to be rejected.

4. In view of above pleadings issued framed at Ex-18 are answered against it as follows :-

ISSUES**FINDINGS**

- | | |
|--|---------------------|
| 1. Does First Party prove that decision taken by it of imposing punishment of deduction of salary from the scale of Rs. 8500/- to Rs. 6500 for 5 years is justifiable? | Does not Survive |
| 2. Does Second party prove that he is entitled for the promotion as stated in para 2.1 of the Statement of claim? | No. |
| 3. Does he prove that action taken by first party in not refunding the rent was against rules? | Yes. |
| 4. Does he prove that action taken by first party of cancellation of Railway Quarter allotted to him was against the principles of natural justice? | Does not survive. |
| 5. Is Second party entitled for setting aside the punishment awarded to him by order dated 14.7.2001 and of 1997 and is entitled for refund of damages? | Yes. |
| 6. What order? | As per order below. |
| 7. Whether second party is a workman? | Yes |

REASONS**Issue No. 7 :-**

5. This is an important issue which goes to the root of the status of the second party workman as first party has challenged his status at the beginning of the written statement contending that second party is not a 'workman' as he was discharging duties in the capacity of Supervisor. Except that, no case is made out by first party. Moreover it is pertinent to note that, application filed by second party was decided by CGIT-I where CGIT-I Mumbai observed in said Application of second party as 'workman'. Said was decided on 9-1-2006. Besides in the evidence no specific case is made out and no evidence is led to project on duties

of the second party to treat him as 'not workman' and exclude him from the definition of 'workman'. Burden of proving this issue rest on both. Second party has to prove that he is workman whereas first party has to prove that he is 'not workman'. The case of holding by Inquiry Officer on the charges of sub letting Railway Quarter to others allowed to second party are admitted and reveals that, second party was presumed by the first party as a 'workman' for ever in the proceeding as well as initiating enquiry against him. In recent ruling Hon'ble Bombay High Court while deciding case of George Thomas V/s Science Technical Centre published in 2007 II CLR page 185 recently observed that, "When all the time workman is treated as employee, he is to be declared as a workman under Section 2 (a) of the Industrial Disputes Act." Considering this old case made out by both I conclude that, second party is workman.

Issue No. 1 :-

6. This issue is regarding imposing punishment of reduction of salary from scale of Rs. 10,500 to Rs. 6,500 for 5 years which was questioned by second party and to see whether it was legal? As far as this issue is concerned, we find no pleading is made out by second party in claim statement filed at Ex-13 vis-a-vis in the Written Statement filed by first party at Ex-15. I think this issue came and appears to be from dispute referred by the Central Government, Ministry of Labour about treating as one of the dispute. However nothing is stated by second party on this in this reference nor considered it by first party to reply it though it is actually one of the subject matter of the reference. In the entire reference both have concentrated on sub letting of Railway Quarter by second party, chargesheet issued against second party, enquiry conducted, charges were exonerated by the Inquiry Officer still management took different view and recovered the rent from second party from his wages. Besides issue of promotion is made out by second party and it is challenged by first party. As far as enquiry, reduction of salary from Rs. 8500 to 6500 is concerned is not at all subject matter of the evidence led by both and case made out by them. So I conclude that, this issue does not arise since not traced by both.

Issue No. 2 :-

7. This issue is regarding entitlement of promotion by second party. Said is denied by first party saying that, though promotion was offered to second party has ignored it and now he cannot claim promotion. In that respect if we peruse cross examination of second party we find, that he admitted that he was promoted on 4-11-99 as Sr. Section Engineer. He further stated that, he was not officially informed. Answer given by second party to this reveals that, he was promoted and he is not denying that he was promoted. Even he admits that, he has produced the copy of it obtained by him from others, where his name is also included in the promotion list. When he was questioned on that, he replied that, he got name at that time only. Even he admits that he was promoted and transferred to Kurduwadi and when question as to why he did not proceed to promoted posting to which he replied that question does not arise since department proceeding was pending against him. In my considered view pending department proceeding cannot be excuse to join on transfer

and promotional post. He also admits that, due to transfer to Kurduwadi he was losing HRA from 30% to 7.5% since He was getting 30% at Mumbai and will be getting 7.5% at Kurduwadi. Besides he answered that, the cannot be transferred on promotion since he is senior most. He admits that, he has not challenged promotion on that ground before any forum. So all these reveals that, opportunity was given to him by promotion to the post of Sr. Section Engineer on 4-11-99 but he admits that, he did not report on that post. This reveals that, he suo motto waived his right of promotion. As of right as per his whims and ideas he cannot claim promotion, as observed by Apex, Court recently where it is observed that promotion is not a right.

Issues No. 3 to 5 :-

8. The main grievance of second party is that, enquiry conducted against him on the ground of alleged sub letting quarters of Mazgaon and at GTB Nagar was not correct. Charges were not proved. Though the charges were exonerated charge sheet was served and enquiry was conducted. According to second party question of subletting Railway Quarter of Mazgaon and at GTB Nagar does not arise as quarter was allotted to him of Byculla and not of Mazgaon and GTB Nagar. Even Inquiry Officer exonerated the charges of subletting Railway Quarter of Mazgaon and GTB Nagar. Even there was not evidence before Inquiry Officer to conclude that, second party has literally subletted Railway Quarter to other. Even there was no finding from Inquiry Officer on that point against the charges of subletting quarters. Still Management has punished him and recovered damages.

9. The witness examined by first party Ex.-21 admits that the quarter was not checked to ascertain whether it is sub-letted by second party. Even he admits that, charges were exonerated by Inquiry Officer. Even he admits that, damages, recovered from second party of Rs. 32,300 were refunded to him. Even CGIT-I, Mumbai in 33 C (2) Application observe said recovery of damages were illegal and second party is entitle to recover it from first party. Said order is not challenged by first party. Even second party admits that, damages Rs. 32,196 were repaid to him after 9 years. When finding of Inquiry Officer was not against second party and when charges were not proved, and when damages recovered were repaid to the second party as per order passed in application filed under Section 33 C (2), I am, of the view that, now second party is not entitled to any relief. It is proved that, cancellation of Railway Quarter allotted to him and charge of subletting it was against the principles of natural justice. However this Court cannot consider that aspect though representative of second party place reliance on number of rulings.

10. As far as issue No. 5 is concerned, he has secured order of CGIT-I an Application filed under Section 33 C (2).

11. So if we consider all that coupled with case made out by both, I conclude that at present second party is not entitled to get any more. Hence the order.

ORDER

Reference is rejected.

Date: 12-6-2007

A. A. LAD, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

का.आ. 2149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर को पंचाट (संदर्भ संख्या 4/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2002 को प्राप्त हुआ था।

[सं. एल-12012/357/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2002) of the Central Government Industrial Tribunal—cum—Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 17-7-2007.

[No. L-12012/357/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R. G. SHUKLA, PRESIDING OFFICER,
C.G.L.T. CUM LABOUR COURT, KANPUR,
UTTAR PRADESH

Industrial Dispute No. 4 of 2002

In the matter of dispute between :

Sri Satendra Kumar Jain
S/o Late Sh. Parmeshu Prasad Jain
R/o 23 Jhanda Bazar Dehradun:

And

The General Manager
State Bank of India
Zonal Office
Kapur Road Madhuban Hotel
Dehradun.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide notification No. L-12012/357/2001-IR (B-I) dated 17-1-2002 has referred the following dispute for adjudication to this tribunal :—

“Whether the action of the State Bank of India Dehradun in terminating the services of Sh. Satendra Kumar Jain Figny Deposit Agent, w.e.f. 10-3-1989 is justified? If not, what relief he is entitled?”

2. In the instant case after receipt of the reference order from the appropriate government, registered notices were issued to the contesting parties by the Tribunal for filing their claims and counter claims. In response to the same contesting parties filed their claim and counter claim before the tribunal and thereafter rejoinder statement was also filed by the workman.

3. It is needless to mention that neither the concerned workman nor his authorised representative has ever

attended the proceedings of the case at any point of time. Whereas statement of claim was filed on behalf of the workman through the brief holder Sh. Pawan Kumar Tripathi, of the representative for the workman, rejoinder statement on behalf of the workman was received in the office through post. It may also be pointed out that the rejoinder statement filed on behalf of the workman was rejected by the tribunal vide order dated 14-7-2003 as the same was not found to be proper and the case was posted for evidence of the parties. Neither workman himself nor his representative ever presented themselves before the tribunal for adducing evidence in support to their case. Management apart from filing documentary evidence has also adduced oral evidence of their witness by name Inder Mohan Bhargawa as M.W.1, but he was not cross examined from the workman as none was present on the date of recording evidence of the management. The evidence of the management, therefore, goes uncontroverted and the tribunal feels no hesitation in believing the same. It is also clear from the conduct of the workman that he palpably failed to substantiate his claim before the tribunal by adducing acceptable evidence oral as well as documentary.

3. Any way it may be pointed out that it is common ground of the contesting parties that the contesting parties arrived at an agreement dated 29-3-79 in which it was agreed upon between the parties that the concern workman will provide services to the management of State Bank of India, for which he will be paid remuneration. This agreement was arrived at under a scheme know as Janta Deposit Scheme and a copy of the agreement dated 29-3-79 is on record of the case. Under the terms of agreement the workman was required to open small accounts under the said scheme from public at large and to deposit the same with the bank that the workman will be provided wages/ remuneration by way of commission on the amount deposited by the workman under the scheme. It was also agreed upon between the parties that in case of violation of any one of the conditions of agreement, his agency is liable to be terminated without any prior notice by the bank.

4. It is the specifics case of the workman that the bank has terminated his services w.e.f. 10-3-89 without any notice or without having any departmental inquiry against him, therefore, the termination of his services from bank is in gross violation of principles of natural justice. It is the further case of the workman that the bank had also lodged a F. I. R. on 10-3-89 under section 408 of I. P. C. on false ground which ultimately culminated in favour of the workman as he was honorably acquitted by the criminal court vide judgement dated 17-12-1998. The workman thereafter approached the authorities of the bank for his reinstatement but all in vain. It has been further pleaded by the workman that in any case he could not have been removed from the services of the bank without there being a regular departmental inquiry against him on the alleged charges for which F. I. R. was lodged by the bank. Lastly it has been pleaded by the workman that the entire action of the opposite party is wholly illegal and violating the rules

governing the service conditions and principles of natural justice therefore, he should be reinstated in the services of the bank with full back wages, continuity of service and all consequential benefits.

5. On the other hand the claim of the workman has been contested by the management bank on variety of grounds, *inter alia*, that the workman was never appointed against any sanctioned post by the management of State Bank of India after subjecting him through regular selection process nor any appointment letter was ever issued to him by the bank. As a matter of fact the bank has terminated the terms of agreement bound agency, as the work of the workman was not satisfactory which cannot be construed as removal from service as claimed by the workman. It has also been pleaded by the bank that the bank hired the services of the workman under Janta Deposit Scheme and the workman was paid his commission on deposit. He was never paid his wages as was paid to regular and permanent employee of the bank. It was clearly indicated in the agreement that bank may without notice terminate the agency at any time, if the deposit collector: (i) commits breach of any of the terms and/or conditions of this agreement and of the Rules and Regulations referred to above and also of other such directions as may be issued from time to time by the bank in this behalf; (ii) is adjudicated insolvent or is convicted by any criminal court for any offence involving moral turpitude or is declared to be of unsound mind by any court of competent jurisdiction or; (iii) suffers in the opinion of the bank from any physical or other infirmity that renders him unfit for discharging or fulfilling his duties and obligations under this agreement; (iv) is guilty of misappropriation or misapplication of amounts collected from the deposits; (v) commits any act which the bank considers as prejudicial to its interest or is found defaulting habitually in observing the Rules and Regulations or directions.

6. It has further been pleaded by the bank that during the period April 1988 to November 1988 workman collected Rs. 34,748 from various Janta Deposit Holders but did not deposit the same in the branch, which was required to be deposited by him either on the same day or at opening hours of the branch on the following day. The workman vide his letter dated 18-3-88 has admitted that he has not deposited the same in the branch. This clearly amounts misappropriation of funds of the depositor and also not observing rules and regulations framed by the bank. Regarding termination of the agency of the claimant, the Branch Manager of the bank issued a public notice dated 1-3-89 in local news paper known as 'Doon Darpan' and after cancellation of his agency the claimant returned all the papers, I-Card, deposit slip bill, account opening forms etc. It has also been pleaded by the bank that various depositors from whom the claimant collected deposit under the scheme during the above period aggregating to Rs. 33,748, contrary to the terms of agreement he had deposited only a sum of Rs. 23,600 in three instalments and sought further time vide his letter dated 28-4-89 for depositing

the rest of the amount. When all efforts failed to get deposit the remaining amount from the claimant Branch Manager lodged FIR dated 28-5-89 against the workman at P. S. Kotwali, Dehradun. The work of deposit collector in Janta Deposit Scheme and the work of regular and permanent employee of the bank is distinguishable and cannot be brought at par with each other. Bank has simply terminated the agency of the claimant in view of stipulation contained under sub provision (1) of provision 4 of the agreement dated 29-3-79. It has also been alleged by the bank that when the claimant never remained in the employment of the bank at any point of time question of terminating his services from the bank does not arise at all and the workman on this score cannot be held entitled to be reinstated in the services of the bank.

7. Ex parte arguments on behalf of the bank were heard in detail by the tribunal and the tribunal has also examined the file carefully. As pointed out above, the evidence of the management in support of their case goes uncontroverted hence the tribunal feels no hesitation in believing the case as set up by the opposite party that bank has simply terminated the agency of the claimant instead terminating his service from the bank. Tribunal is further of the view that termination of agency under contract cannot be construed to be termination of the service of the claimant by the bank. The claim of the claimant also appears to be barred by the provisions of Section 2 (oo)(bb) of the I. D. Act, 1947. It is settled law that the tribunals are not empowered to reduce or enhance the scope and ambit of the schedule of reference order in view of sub section (4) of Sec. 10 of the Act, therefore, it will be futile exercise on the part of this tribunal to travel beyond the scope and ambit of the terms of agreement dated 29-3-79, which is the very basis of schedule of reference order which clearly indicate that the bank has terminated the agency of the claimant in terms of Para 4 (1) of the agreement dated 29-3-79. In view of it cannot be presumed even for the sake of arguments that the alleged claimant ever remained in the active employment of the opposite party bank or bank has ever issued any appointment letter in his favour or there existed any regular or permanent vacancy at the branch therefore, from this point of view the schedule of reference order appears to have become inoperative. Therefore, it is concluded that bank have never terminated the service of the claimant from any regular or permanent post, question of granting him relief as claimed, does not arise at all.

8. In the end it is held that workman has palpably failed to substantiate his claim before the tribunal by adducing acceptable evidence, therefore, he cannot be held entitled for any relief and the reference order is bound to be answered against the claimant.

9. Accordingly award is made absolute holding that Sri Satendra Kumar Jain is not entitled for any relief and the award is decided against the claimant and in favour of the opposite party bank.

10. Reference is answered accordingly.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 17 जुलाई 2007

Mumbai, dated 11th June, 2007

AWARD

क्र.आ. 2150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कॉकन रेलवे कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं II, मुम्बई के पंचाट (संदर्भ संख्या 30/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं.एल-41012/06/2001-आई आर (बी I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2150.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.30/2001) of the Central Government Industrial Tribunal-II, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Konkan Railway Corporation Ltd. and their workman, which was received by the Central Government on 17-7-2007.

(No. L-41012/06/2001-IR (B-I))

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI

Present : A. A. Lad, Presiding Officer

Reference No. CGIT-2/30 of 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT
OF KONKAN RAILWAY CORPORATION LTD

The Chief Engineer,
Konkan Railway Corporation Ltd.,
Ratnagiri (South),
Railway Complex, MIDC, Marjole
Ratnagiri-415 639 (MS)

And

The Workman,
Mr. Ravinder Manohar Mulye,
Post Panval,
Tal. & Dist. Ratnagiri-415 619
(Maharashtra)

APPEARANCES

For the Employer : Mr. Gurnath Naik Advocate
For the Workman : Mr. J. H. Sawant Advocate

The Government of India, Ministry of Labour, by its order No. L-41012/06/2001 [IR(B-I)] dated 22-02-2001 in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Chief Engineer (South) Konkan Railway Corporation Ltd., Ratnagiri in terminating the services of Shri Ravinder Manohar Mulye w.e.f. 1-7-1995 is legal and justified? If not, to what relief the workman is entitled for?"

2. To support subject matter referred in the dispute, second party rely on claim statement filed at Ex-6 stating that, he joined first party in the capacity of watchman w.e.f. 13-12-92. He worked continuously. He was posted for 12 hours watch duty at Open Yard Store. He was attending work which is of permanent nature. He was signing record and muster maintained by first party. He was supervised by Assistant Controller of Stores. He was paid monthly on daily wages for Rs. 30 for 12 hours duty. First party exploited second party workman taking advantage of his social and economic backwardness. He was not granted privilege leave or any other benefits. On 01-07-95 he was asked by Chief Engineer not to report on duty. According to second party, said instructions were against the provisions of Industrial Disputes Act, more precisely said instructions violate Section 25 F of Industrial Disputes Act. So it is submitted that instructions given by Chief Engineer (South) preventing workman not to attend duty from 1-7-95 be quashed and set aside directing first party to reinstate him with benefits of backwages and other consequential benefits.

3. This is disputed by first party by filing written statement at Ex-8 denying relationship as Employer-Employee. It is contended that second party was taken on Contract basis. He was purely working as temporary workman on daily wages. No assignment was given to him by the first party. Wages were given at the rate of Rs. 30 per day. He automatically stopped in reporting from duty from 1st July, 1995. The alleged termination w.e.f. 1st July, 1995 is challenged by second party by approaching A.I.C (C) in 2000 i.e. after about five years. He worked with first party on contract basis from 13-12-92 to 1-7-95 and remained absent without intimation and abandoned the job thereafter. When second party was not regular employee does not attract the protection given under Industrial Disputes Act and in that scenario first party was not supposed to give notice, offer retrenchment compensation or follow procedure of issuing charge-sheet on abandonment of job and conduct enquiry. So it is submitted that, claim be rejected.

4. In view of above pleadings, my Learned Predecessor framed issues which are answered against them :

| Issues | Findings |
|--|----------------|
| 1. Whether the workman was in continuous service as contemplated under the Industrial Disputes Act? | No. |
| 2. Whether the management complied with the provision made under the Konkan Railway Corp. Ltd., (Discipline and Appeal Rules) 1992 ? | Does not arise |
| 2a. Whether management proves that workman abandoned the service w.e.f. 1-7-1995 ? | Yes |
| 3. Whether the action of the management of Chief Engineer (South) Konkan Railway Corporation Ltd., Ratnagiri in terminating the services of Shri Ravinder Manohar Mulye w.e.f. 1-7-95 is legal and justified ? | Does not arise |
| 4. What relief the workman is entitled to ? | Does not arise |

Reasons

Issue No. 1 :

5. Second party claimed that, he was instructed by Chief Engineer (South) not to report on duty from 1-7-95 claiming that he worked with first party from 13-2-92 as a workman and having watch and ward duty in an Open Yard Store. He also claimed that he was getting salary for his 12 hours work on duty wages of Rs. 30. He also claimed that he was not getting public holidays as well as earned leave. He also claimed that he was supposed to work for twelve hours. All these things are admitted by first party. Even case of the first party is that he was taken on contract basis and was paid on daily wages.

6. It is admitted position that, second party was not interviewed and selected by first party. It is matter of record that to have watch & ward duty in an Open Yard Store and that too for 12 hours shift if considered, coupled with say of the second party that, he was not getting public holidays or any other concession as regular employee status was given. It is rather clear that, he was engaged on daily wages. Besides case of the second party that, he was to work in a shift of 12 hours which is not at all applicable to a regular employee also support the case of daily employment of second party. Besides no appointment order is produced and even not claimed by second party he was appointed

by first party on regular basis. Even he has not produced any document that he signed muster roll and was a regular employee of first party. When all these questions remain unanswered question arises whether such a person can be called as a regular employee of first party ?

7. It is fact that he worked continuously from 13-2-92 to 1-7-95 and did not work thereafter. Case of the first party on that is second party abandoned the job and whereas case of second party is that he was instructed not to report on duty from 1-7-95. That means if that is so, definitely it was injustice on second party as he is abruptly asked not to report on duty from 1-7-95. It is matter of record that, said grievances as alleged by second party are agitated by him first time in 2000 and that too before Goa ALC (C). That fact is not denied by second party. So this act of second party and the decision taken in challenging the so called refusal by the Chief Engineer w.e.f. 1-7-95 if considered, question arises, how one can wait for such a long period on such plain instruction not to report on duty? Even that question was put to second party in cross but he unable to explain it satisfactorily and say that he did not get advice on that point. All that in my considered view, raising dispute or making grievances does not require any guidance. If at all it required guidance then why in 2000 only he raised it? All those questions remained unanswered.

8. The evidence led does not prove that, he worked continuously as contemplated under Industrial Disputes Act as a employee of first party. On the contrary first party claim that he was taken on contract basis and he stopped reporting from 1-7-95. That fact is not disputed i.e. regarding absence of the second party from 1-7-95 onwards. When there is such a long absence, it reveals that, second party is not doing work continuously as expected under Industrial Disputes Act of first party but definitely might have worked on contract basis. Moreover, case of second party of 12 hours shift, payment on daily wages Rs. 30 and not getting any concession of public holidays and other things reveals that, he did not work continuously as expected under Industrial Disputes Act. So I answer this issue in the negative.

Issue No. 2 & 3 :

9. Case of the second party that, without following provisions of Industrial Disputes Act he was illegally prevented in reporting on duty and action of the Chief Engineer South in instructing second party not to report on duty w.e.f. 1-7-95 is illegal. Whereas case of the first party is that since second party was not regular employee of it, question of following provision of Industrial Disputes Act does not arise. Besides the suo moto stopped in reporting on duty w.e.f. 1-7-95. In that scenario question of instructing him not to report on duty by Chief Engineer (South) does not arise.

10. Besides in that connection second party place reliance on his affidavit filed at Ex-17. In the cross he admits

that he was not made permanent. He admits that no such a letter was given by first party. He admits that he was not served by letter about leaving job from 1-7-95. He admits that, he received wages up to June 1995. He states that though he informed in writing about his refusal on duty from 1-7-95 he has no proof of it. Even he admits that he kept silent from 1-7-95 to August 2000. All this reveals that second party kept silent for 5 years and when he got guidance he rather raised dispute to see what can be achieved. Even witness examined by first party at Ex-20, 21 and 22 does not support case of the second party and throw any light to conclude that second party was prevented in reporting on duty w.e.f. 1-7-95. When second party is not workman of first party question of following provision of Industrial Disputes Act does not arise. Besides when he is not workman of first party question of giving instruction by the Chief Engineer to second party not to report on duty from 1-7-95 also does not arise. On the contrary silence of second party from 1-7-95 till August 2000 i.e. till he approached the Goa ALC (C) proves that, he himself estopped in reporting on duty which is nothing but abandonment of job by the second party on his own and when he abandoned the job and when he is not regular employee of first party question of giving charge sheet, or notice about absenteeism or holding enquiry does not arise. So I conclude that first party was not supposed to conduct enquiry and does not require to follow provision of Industrial Disputes Act for such self decision of second party since second party abandoned the job. Accordingly I answer these issues to that effect.

Issue No. 4 :

10. When second party fails to prove that, he is not employee of first party and was illegally terminated, question of claim made by him does not require to consider. On the contrary his attitude, his approach and his silence from 1-7-95 till August, 2000 reveal that he was not interested in the work and *suo moto* left. All this reveals that second party abandoned the job and it is not that due to so called instruction give by Chief Engineer (South) not to report on duty w.e.f. 1-7-95 does not arise to treat as a termination. So I conclude that, second party abandoned the job.

11. In view of discussion above I conclude that, second party is not entitled for any relief and as such this reference required to be rejected. Hence the order :

ORDER

Reference is rejected.

Date : 11-06-2007

A. A. LAD, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

को.आ. 2151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधकों के संबंध निवोवकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/क्रम न्यायालय, सं. 11, मुम्बई के पंचाट (संदर्भ संख्या 2/52/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2007 को प्राप्त हुआ था।

[सं. एन-31011/9/2003-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2151.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/52/2003) of the Central Government Industrial Tribunal-cum-Labour Court-II, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Mumbai Port Trust and their workman, received by the Central Government on 16-7-2007.

[No. L-31011/9/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

A. A. Lad, Presiding Officer

Reference No. CGIT-2/52 of 2003

Employers in relation to the Management of Mumbai Port Trust

The Chairman,
Mumbai Port Trust,
Port Bhavan, Ballard Estate,
Mumbai-400 038

And

The Workman,
The President
Transport and Dock Workers Union
P. D'mello Bhavan,
Carnac Bunder,
Mumbai.

APPEARANCES

For the Employer : Mr. Umesh Nabar, Advocate

For the Workman : Mr. A. M. Koyande, Advocate

Mumbai, dated 5th June, 2007

AWARD PART-I

The Government of India, Ministry of Labour, by its Order No. L-31011/9/2003-IR(B-1E) dated 11-09-2003 in

exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of Mumbai Port Trust in removing from service of Shri Pandharinath Lokande, Shore Worker, Docks Department MBPT w.e.f. 9-5-2001 is legal and justified? If not, to what relief Shri Pandharinath Lokande is entitled to?"

2. Claim Statement is filed at Ex-11 by Secretary Transport & Dock Workers' Union stating that the services of the concerned workman was terminated illegally w.e.f. 9-5-2001. Said was challenged before competent authority which did not consider and concerned workman was removed from employment. Union raised dispute regarding concerned workman's termination stating that chargesheet dated 28-08-2000 served on concerned workman alleging of habitual absenteeism was false one. It was alleged that concerned workman remained absent unauthorisedly from 20-05-1998 to 31-12-1998 and thereafter continued to remain absent from 08-01-1999 to 28-08-2000 by which he violated Regulation 3 (IA) (ii) and of the B.P.T. Employees (Conduct) Regulation 1976 read with Regulation 8 & 12 of the BPT Employees (Classification, Control and Appeal) Regulation 1976. According to union concerned workman was already penalized for the period of 1994 to 1998. He also applied for regulation of his absence and same was regularised. His absence from 8-1-99 to 12-10-2000 has justification as he was mentally disturbed. He was admitted to Pune hospital and was taking treatment. Said was explained by him, still show cause notice dated 29-3-99 was issued by first party about his absenteeism proposing the penalty of removal from services which he replied still, said action was confirmed. The appeal filed by him was turned down.

3. According to him, though there was evidence before Inquiry Officer about his absenteeism and sufficient grounds to regularise his absenteeism instead he was not considered for regularisation of his absenteeism and very harsh and disproportionate action of removal was taken. So it is prayed that, findings given by Inquiry Officer may declare perverse and punishment of removal be set aside with direction to first party reinstate concerned workman with benefit of backwages and continuity of service.

4. This is objected by the first party by filing written statement at Ex-15 stating that, second party is habitual in remaining absent on duty. On number of occasions, he remained absent without informing or without getting sanctioning leave which affect the working of the first party. Said workman was working as a Shore worker. Even his service record was not clean and unblemished

though number of warnings were given to improve his attendance, instead of improving in it, he developed it by remaining absent unauthorisedly. He was not having habit to intimate cause behind absenteeism. He was not applying in advance for leave. He did not explain why his absenteeism should be regularised when served with charge sheet and face enquiry. He did not utilize that opportunity to explain his absenteeism and justify how it is to be regularised? Since there was no reason to remain absent from duty unauthorisedly, first party by holding enquiry and observing findings given by the Inquiry Officer which has base and grounds rightly concluded to remove second party observing not interested in the work. Since second party has no justification and since findings given by Inquiry Officer is just and proper, it is submitted that, action taken by first party on the said basis be maintained observing findings not perverse.

5. In view of above pleadings, issues are framed at Ex-17. Out of it Issues No. 1 of perversity of findings is treated as preliminary issue which reads as follows alongwith its findings.

| Issue | Findings |
|-------------------------------|----------|
| 1. Whether findings perverse? | No |

REASONS

6. Second party Union challenged the removal of the concerned workman dated 9-5-2001 which was taken by first party on the basis of the enquiry conducted after issuing charge sheet and obtaining findings of the Inquiry Officer. According to the Union Inquiry Officer was not having reasons to conclude about absenteeism treating it was unauthorised of the concerned workman. Concerned workman submitted all documents which were not considered by Inquiry Officer and without going through those, findings given by Inquiry Officer is perverse.

7. It is pertinent to note that second party though challenges the perversity of findings decided not to lead evidence by stepping in to witness box and by intimation Ex-18 he inform to that effect.

8. So the evidence before us is the evidence recorded by Inquiry Officer about absenteeism which is filed by the first party in the form of Xerox copies with Ex-16 to decide whether findings of Inquiry Officer is perverse? On the basis of said both argued their respective case.

9. Before us is the point of findings of Inquiry Officer. According to second party findings of Inquiry Officer are perverse. That means second party is not challenging the enquiry and its procedure and fairness of it. By this second party want to challenge the findings of Inquiry Officer only.

10. We have to see the evidence placed before Inquiry Officer which we find with Ex-16 and more

precisely from page on 21 on wards till page 30. The perusal of the said findings reveals that concerned workman has not prayed for leave in advance. From question No. 2 it reveals that, what ever leave was at the credit of concerned workman were sanctioned to him and remaining portion was treated unauthorised absence. Question No. 4 reveals that though concerned workman produced medical certificate of Dr. Sarode, Psychiatrist, Pune Hospital from 8-1-99 to 3-11-2000 it was produced at the time of joining of duty and no intimation was given about his admission in hospital and taking treatment from concerned Doctor and absenteeism. Even it is brought on record that concerned workman did not try to communicate or convey the reason behind absenteeism so as to enable first party to adjust his work. From this enquiry it is not pointed out by the second party's advocate which evidence was ignored by the Inquiry Officer observing concerned workman guilty of the charges of unauthorised absenteeism? Nothing is pointed out.

11. When medical certificate of Pune Doctor was produced at the time of joining duty for period of 8-1-99 to 3-11-2000 and when it was not intimated to first party, by any means by the concerned workman, about his alleged sickness it reveals that charge of "unauthorised absenteeism" means "proceeded on leave without sanction" is proved against concerned workman. It is not pointed out by the concerned workman that, he was not authorised leave and was punctual in reporting to the first party. Even charge of unauthorized absenteeism is not for once as it is going on for years together which reveals that, concerned workman developed solid habit of remaining absent without intimation and sanctioning leave. Even he is unable to point out his grievance before authority vis-a-vis before this Court. So if we consider all this coupled with case made out by both, I conclude that, the findings given by Inquiry Officer cannot be observed perverse and I conclude that findings is not perverse and hence the order.

ORDER

1. Findings of the Inquiry Officer are not perverse.
2. Both parties to appear in this reference on the point of quantum of punishment.

Date: 05/06-2007

A.A. LAD, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

क्र.अ. 2152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधकों के संबंध निषेधकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अध न्यायालय नं. 1, मुम्बई के पंचाट (संघर्ष संख्या

44/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/36/2004-आई. आर. (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.44/2004) of the Central Government Industrial Tribunal-cum-Labour Court-I, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of India, and their workman, received by the Central Government on 16-7-2007.

[No. L-12012/36/2004-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present : Justice Ghanshyam Dass,
Presiding Officer

Reference No. CGIT-44 of 2004

Parties :

Employers in relation to the management of
Bank of India

And

Their Workmen

APPEARANCES :

For the Management: Shri Lancy D'Souza
Shri Ganesham

For the Workman : Shri Patel, Advocate.

State : Maharashtra

Mumbai, dated 28th June, 2007

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of Sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) vide Government of India, Ministry of Labour, New Delhi Order No. L-12012/36/2004-IR(B-II) dated 31-5-2004. The terms of reference given in the schedule are as follows :

"Whether the action of the management of Bank of India in awarding the punishment of removal

from service with superannuation benefits and without disqualification from future employment vide order dated 9-12-2002 to Shri S.B. Jadhav, Cashier-Clerk is justified, proper and in proportion to the alleged charges of misconduct? If not, what relief the workman is entitled to and from which date and what other directions are necessary in the matter?"

2. Mr. S.B. Jadhav (for short workman) was issued charge sheet dt. 27-5-2002 which runs as follows :

| Sr. No. | Drawn on | Cheque No. | Credited On | Amount of Cheque (Rs.) | Cheque in favour of BCI A/c. | Collected in the Account of |
|---------|-------------------|------------|-------------|------------------------|------------------------------|-------------------------------------|
| 1. | RBI, Fort, Mumbai | 837001 | 6-5-1998 | 3,71,371/- | Sunita Garments | C/D A/c No. 40160 Vijay Trading Co. |
| 2. | RBI, Fort, Mumbai | 837002 | 6-5-1998 | 4,21,927/- | Sri Garments | -do- |
| 3. | RBI, Fort, Mumbai | 809090 | 21-5-1998 | 20,92,263/- | Dadar Overseas | -do- |
| 4. | RBI, Fort, Mumbai | 839470 | 22-5-1998 | 13,34,843/- | Sunita Garments | -do- |
| 5. | RBI, Fort, Mumbai | 839669 | 22-5-1998 | 7,68,958/- | Deshmukh Overseas | -do- |

That, in terms of Bank's instructions, although, the facility of collection of cheques in third party accounts can be selectively extended to certain valued customers of old standing against their indemnity, such a facility was expressly forbidden in the case of dividend/ interest warrants/refunds orders. The 5 cheques accepted by you were issued by the Customs Authorities and were drawn on Reserve Bank of India and were in fact duty draw back refunds issued to the exporters. In view of this position, you should have been all the more careful while accepting the aforesaid cheques in a third party account. Further, you have accepted account payee order cheques for large amounts in the third party account without obtaining indemnity from the account holder. The account in which the cheques were collected cannot be termed as an account of valued customer of old standing, as the account has been opened on 7-11-1997 and had only negligible balance at the end of each day. Moreover, when crossed cheques are collected in third party accounts, endorsement of the payee is a must; yet in all these 5 cases, you had accepted the cheques in gross violation of Bank's norms, although no endorsement of the payee was appearing on the reverse of the cheques. Since the cheques were by way of payment of duty draw back and were crossed account payee only. However, in gross violation of Bank's norms, you got these cheques collected in a third party account and that too when none of the cheques were having any endorsement on the reverse. That the

"While functioning as officiating Cashier Incharge at Bank's erstwhile Cotton Exchange Branch during May 1998, acts of misconduct, as hereinafter mentioned are alleged to have been committed by you :—

That, you accepted in clearing 5 cheques crossed account payee and made to the order totalling to Rs. 49,89,362/- issued by the Customs Authorities to different parties having accounts with Bank of India in the third party C/D account of M/s. Vijaya Trading Company, the details of which are furnished hereunder :—

proceeds of the account payee crossed cheques/refund orders thus collected in the third party account were withdrawn therefrom by such third party. Since the proceeds of the account payee cheques/refund orders were collected to third party's account without any mandate from the payee and in gross violation of the Bank's rules/Negotiable Instruments Act, Bank is not entitled for protection and is liable in respect of the amount of Rs. 49,89,362/- for wrongful conversion.

Your aforesaid, acts if proved, would amount to the gross misconduct of "doing any act prejudicial to the interest of the Bank" within the meaning of para 19.5 (j) of the Bipartite Settlement, which reads as under :

"Doing any act prejudicial to the interest of the Bank or gross negligence involving or likely to involve the Bank to serious loss"

3. The domestic enquiry was conducted by Shri S. N. Kanade, Chief Manager (O), Mumbai South Zone as Enquiry Officer. The workman duly participated in the enquiry after pleading not guilty. The enquiry resulted in against the workman. The copy of the enquiry report was supplied to the workman. The workman was issued a show cause notice for proposed punishment and at last the final punishment order dt. 9-12-2002 was passed by the Chief Manager, Bullion Exchange Branch/Disciplinary Authority.

4. The workman has challenged the enquiry and also the finding of the Enquiry Officer. He has also challenged the quantum of punishment.

5. The workman has filed the affidavit of self in lieu of his examination in chief in support of his case.

6. The Bank has filed the affidavit of Shri. S. N. Kanade, Enquiry Officer in lieu of his examination in chief. The parties have filed the documents which have been duly exhibited.

7. I have heard the learned counsel for the parties and gone through the record. The written synopsis filed by the workman has been perused.

8. The domestic enquiry is just and fair since there is no violation of any principle of natural justice. The workman was issued the charge sheet. He duly participated in the enquiry along with his Defence representative. The Bank examined witnesses before the Enquiry Officer and all of them were cross-examined on behalf of the workman. The workman was given due opportunity to lead the evidence in defence and he actually led it. He was given due opportunity of hearing. The procedure adopted by the Enquiry Officer appears to be just and fair. Nothing material is brought on record to show that the enquiry was unjust or unfair for any violation of principles of natural justice.

9. Now the question arise as to whether the finding of the Enquiry Officer is perverse and whether the punishment imposed upon the workman is proper.

10. Admittedly, the preliminary investigation into the matter was made by Shri. S. V. Vivekanandan, Chief Manager (Investigation) prior to issuance of charge sheet. Mr. Vivekanandan submitted his report on 6-6-2001 and supplementary report dt. 14-8-2001. The enquiry took place on the receipt of the notice from Police Inspector Shri. S. S. Mandlik of C. B. I. Special Crime Branch, Belapur, New Mumbai for the allegations.

"It is alleged that 23 A/c Payee & Order crossing cheques, amounting to Rs. 209.36 lakhs drawn on Reserve Bank of India, Fort, Mumbai and issued favouring various parties A/c BNOI by customs authorities towards Duty drawback, were allowed to be encashed fraudulently through 3rd party Current A/c No. 40160 of M/s. Vijay Trading Co., (Proprietor Mr. Sudhir B. Mandal), Between 2-4-1998 and 29-6-98 in default to the bank's laid down norms and procedure by S/Shri D. U. Parmar, the Dy. Manager (Deposits) V. M. Parkhe, the Chief Cashier and Sunil V. Jadhav, the cashier of Bank of India, Cotton La. Branch which may likely to result in financial loss to the Bank".

Out of the aforesaid 23 Account Payee cheques the workman while posted as Cashier in absence of regular Chief Cashier accepted the five cheques detailed in the charge sheet amounting to Rs. 49.89 lakhs and without crediting with those cheques in the Payee's Account discharged their payment by crediting into the third party account without obtaining any endorsement from the Payee's Account and also the Indemnity Bond. After investigation, Shri. S. Vivekanandan has given out the following conclusion *vide* report dt. 6-6-2001.

"The fact disclosed hereinabove would conclusively go to prove that Shri. V. M. Parkhe the Chief Cashier, Ex. Branch, Shri Sunil B. Jadhav and Officer Shri. D. U. Parmar were responsible for the present episode.

Since we apprehend that Mr. V. M. Parkhe (who had also came to adverse notice earlier for similar instances) may try to tamper the records, we recommend that necessary administrative action including suspension may be considered.

Though there appears to be no actual beneficiaries of the cheques in question and the whereabouts of Mr. Sudhir B. Mandal the proprietor of M/s. Vijay Trading Co., is not known, the customs authorities may in future make a claim on the bank and as such there would be a huge loss to the bank due to the acts of the above staff and officer. However, there has been no claim made so far inspite of lapse of more than 3 years after the said incident".

11. Mr. S. Vivekanandan *vide* report dt. 14-8-2001 *vide* para 12 reported in the following manner:

From the above facts, it is clear that Mr. V. M. Parkhe and Mr. Sunil B. Jadhav were responsible for accepting A/c Payee crossed cheques drawn on various parties in third party's account for collection and there was no occasion for the officers to verify the above facts since the respective paying-in-slips were not being sent to the officers at the time of obtaining their signatures in the Outward Memos. None of the paying-in-slips contain the signature of any of these officers. The officers, in a routine course, only verify the total amount of the Outward Memo with the listing parties and sign the outward memos, already signed by the cashier in-charge. Although the Outward Memos, now collected were signed by various officers as pointed out in Annexure "B" we can safely presume that the cheques in question were sent for collection under the cover of the above Outward Memos.

We enclose the up dated Annexure "B" and copy of paying-in-slips dated 9-2-1998, 11-4-1998, 4-4-1998, 11-2-1998 and 27-5-1998 along with copies of outward memos indicated in the said annexure, for ready reference. The CBI investigation is still on and we are keeping in touch with Mr. S. S. Mandlik, the CBI I.O. and recently we have submitted the details of accounts connected with this case wherein the main accused Shri Krishna Kumar Gupta is mostly involved.

12. The aforesaid reports were the basis of the enquiry against the workman. These reports were heavily relied upon by the Enquiry Officer. The evidence which was led before the Enquiry Officer was on the point of proving the documents. The workman never disputed the fact that he was posted as a temporary cashier in absence of the regular Chief Cashier and he accepted the cheques. The facts mentioned in the charge sheet are not in dispute. The

defence of the workman through out before the Enquiry Officer as well as in the instant reference is that there was practice in the Bank for the last 30 years to credit the account payee cheques of a party to the account of the third party. This fact was clearly reflected by Shri. S. Vivekanandan in his reports and not denied by the Bank in particular. The workman was a temporary cashier. The cheques could not be cleared out without the knowledge and signature of the Officers since they were for the amount more than Rs. 50,000/-. The Officers of the Bank were left out deliberately and the poor workman was made victim just to save the Officers. The case of the Bank through out is that the cheques in question were issued by Customs Authorities and were drawn on Reserve Bank of India. They were wrongly cleared in third Party Account without obtaining Indemnity from the account holder and the account in which the cheques were collected were not the accounts of new customers of old standing. The new endorsement of the Account Payee was a must which was not obtained by the workman and thus he committed gross misconduct under clause 19.5 (j) of the Bi-partite Settlement. Thus, the Bank was just in passing the final punishment order vide Section 6(b) of the Bi-partite Settlement.

13. The finding of the Enquiry Officer cannot be said to be perverse since there is no dispute about the facts. The workman through out admitted facts which amounted to dereliction of duty on the part of the workman who was posted as temporary Cashier on the fateful dates. His contention that there was a regular practice like this does not appear to be without any basis. It is the admitted position that there was such practice which was duly followed by the workman as well as which fact is clear from the report of Shri. S. Vivekanandan. Similar position was reported by the Enquiry Officer in his report but still he placed the burden upon the workman in view of the circular dt. 16.12.1996 issued by the Bank. The workman tried to deny the knowledge of the circular but this is of no use. The workman was expected to know the circular of the Bank since he was working as a Cashier in the Bank. According to this circular the workman was expected to obtain endorsement from the holder of the cheques for credit into the third party and should have also obtained Indemnity Bond. This requirement of the law was there just to protect the interest of the Bank so that the holder of the cheque may not put any claim against the bank for wrongful encashment. It may be pointed out that no evidence is available on record about the strict implementation in practice by the aforesaid circular. However, I feel that non-adherence of the aforesaid circular on the part of the workman does not result in any loss to the Bank nor there is any possibility of any loss to the Bank since a period of about 10 years has already elapsed and no claim whatsoever is being made as per admission by the bank during the course of argument before me. In these back ground, it cannot be said that on account of gross negligence of the workman there was likelihood of any loss to the Bank. The act of the workman could be said

to be an act prejudicial to the interest of the Bank but its gravity is lowered down a lot in view of the fact that there was no loss nor any likelihood of any loss to the Bank or to anybody. No doubt, the workman could be said to be guilty of gross misconduct for acting prejudicial to the interest of the Bank but its gravity is reduced a lot in view of the aforesaid fact. The Enquiry Officer did not consider this aspect of the matter and similar was the position with the Disciplinary Authority who failed to take into consideration the aforesaid act. The departmental appeal preferred by the workman also resulted in dismissal without caring to see as to whether there was any loss or likelihood of any loss to the Bank. The Competent Authority was impressed by the fact that the cheques in question amounted to about Rs. 50 lakhs while there was no loss even of a single penny.

14. Besides the above, the responsibility of the Officers was not considered at all and they were left out for no reasons. The dereliction of duty on the part of the Branch Manager and the other Officers whose names have clearly come on record went unpunished at all. The cheques could not be cleared out without the signature of the Officer and this fact was not taken into consideration by the Disciplinary Authority. It appears that the workman was punished to save the Officers of the Bank. The Enquiry Officer was asked specifically on this point to which he stated that he was just required to go into the charge sheet against the workman and not against other Officers. It was a natural reply for the Enquiry Officer. In fact this was the duty of the General Manager/Zonal Manager to look into the facts in a right perspective to bring to books all the guilty Officers including the workman. The thrusting of the responsibility upon the shoulder of the workman alone is not justifiable. It amounts to discrimination which is not to be tolerated by the law. The Bank was not justified in punishing the workman with the final penalty of removal from service. No doubt, the workman could not be absolved of the charge totally but a lesser punishment would have been proper for the Competent Authority in the instant case.

15. Considering the entire record, I conclude that the charge of misconduct was proved against the workman but the punishment of removal from service cannot be said to be commensurate with the charge of misconduct. The interest of justice would be served if the workman is awarded the punishment under Section 6(e) i.e. the workman is brought down to one lower stage in the scale of pay. The punishment awarded to the workman by the competent Authority is modified accordingly.

16. In view of the above, the punishment order is modified accordingly. The workman would not be entitled to back wages since there is no evidence on behalf of the workman for his non-employment and the workman was not disqualified for future employment by the Bank.

17. The reference is disposed of accordingly.

JUSTICE GHANSHYAM DASS, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

क्र.आ. 2153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युनाइटेड कमर्शियल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 1/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल-12011/95/2005-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 12153.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of United Commercial Bank and their workmen, received by the Central Government on 17-7-2007.

[No. L-12011/95/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA**

Reference No. 01 of 2006

PARTIES:

Employers in relation to the management of
United Commercial Bank

AND

Their workmen

PRESENT:

MR. JUSTICE C. P. MISHRA, Presiding Officer

APPEARANCE:

On behalf of the Management : Mr. D.K. Pura, D.C.O.
of the Bank

On behalf of the Workmen : Mr. M. Bhowmick,
Committee Member of
West Bengal and
Sikkim State Committee,
UCB Bank Employees'
Association

State : West Bengal

Industry : Banking

Dated : 11th July, 2007

AWARD

By Order No. L-12011/95/2005-IR (B-II) dated 19-12-2005 and Corrigendum of even number dated 2-3-2006 the Central Government in exercise of its powers under Section 10 (1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of United Commercial Bank by not considering Sh. Ashis Kumar Das for promotion from subordinate cadre to Clerical cadre as per clause 4.6 (II) of promotion policy settlement is just and legal? If not, what relief the workmen concerned is entitled to?"

2. When the case was called on 9-7-2007 none appeared for either side. It appears from record that the representative of the workmen appeared before the Tribunal last on 9-8-2006 when he prayed for time to file statement of claims etc. in this case, but thereafter he did never appeared, nor took any step whatsoever in the matter and the case was being adjourned from time to time giving them the opportunity to proceed with the matter. It is thus clear that the workmen are no longer interested to proceed with the matter.

3. Since the workmen are not interested to proceed in the present reference, this Tribunal has no other alternative but to dispose of the matter by passing a 'No Dispute' Award.

4. A 'No Dispute' Award is accordingly passed and the reference is disposed of.

Kolkata

Dated : 11th July, 2007

C. P. MISHRA, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

क्र.आ. 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, अर्नाकुलम के पंचाट (संदर्भ संख्या 136/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/143/2002 आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2154.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 136/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 17-7-2007.

[No. L-12012/143/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT
ERNAKULAM**

PRESENT:

SHRI P.L. NORBERT, B.A., L.L.B., Presiding Officer
(Wednesday the 11th day of July, 2007/
20th Asadha, 1929)

I.D. 136 of 2006

(I.D. 79/2002 of Industrial Tribunal, Kottam)

Workmen : Smt. K. Vijayalakshmi,
TC No. 37/1745, S. P. Lane,
West Nada,
Thiruvananthapuram

Management : Adv. Shri Manoj R. Nar
The Regional Manager,
Central Bank of India,
P.B. No. 98, Gopal Building,
Thyvara Road,
Thiruvananthapuram

Adv. Sri V. V. Sudharthan

AWARD

This is a reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

"Whether the action of the management of the Central Bank of India in denying the employment to Smt. K. Vijayalekshmi beyond 1997 is legal and justified ?? If not, what relief the said workman is entitled to?"

2. The facts of the case in a nutshell are as follows :

According to the worker, Ms. K. Vijayalekshmi she was engaged as a peon on a temporary basis in a regular post of Rishimangalam Branch of Central Bank of India in 1987. She worked as such continuously till 1997. Though she was eligible to be absorbed, the management terminated her service without following the procedure under Industrial Disputes Act for termination. The case of another similarly situated employee was considered by Industrial Tribunal, Alapuzha and an award was passed directing bank to absorb him. The Branch Manager had informed the Regional Office that the worker had satisfied the eligibility criteria for absorption. Hence the management has to be directed to reinstate the worker and absorb her in service with retrospective effect and pay all consequential benefits.

3. According to the management the worker was never engaged in bank, much less for a continuous period of 240 days or 12 calendar months in one year. The bank also denies that she was in bank service from 1987 to 1997. It is stated that she might have been a casual labourer (tea server) in staff canteen. Which is not connected with bank. She has no right either for employment or for absorption in bank. The Branch Manager's recommendation, even if true, will not confer any right on the worker for absorption. A decision rendered by Industrial Tribunal, Kollam in another case cannot apply to claimant. The claim is liable to be rejected.

4. In the light of the above contentions the following points arise for consideration :

- (1) Was the worker employed in Bank?
- (2) Is the termination legal?

The evidence consists of the oral testimony of WW 1 and documentary evidence of Exts. W 1 to 8 on the side of worker and MW 1 and Exts. M 1 & M 2 on the side of management.

5. Point No. (1):

The worker claims to have worked in Rishimangalam Branch of Central Bank of India as temporary peon in a regular post from 1987 to 1997 continuously. Bank denies employment of any kind. According to them she would have been a casual worker in staff canteen which is not run by bank. It is an independent arrangement by staff. This is the contention in the written statement and in evidence. To bring home the contention of the worker there is only her testimony and documents Exts. W 1 and W 5. Ext. W 1 is a copy of a letter written by Manager of Thiruvananthapuram Branch to Regional Manager, wherein it is stated that 3 workers of Thiruvananthapuram II Branch and the worker of Rishimangalam Branch have attained the eligibility norms for absorption. The document is challenged by the management. According to bank the Branch Manager, Thiruvananthapuram had no authority to recommend the case of the worker who claims to have worked in a different

branch. The letter, Ext. W 1 shows that the Branch Manager was recommending the case of temporary employees of Thiruvananthapuram Branch. Though it is written: "we also learn that Miss. Vijayalekshmi who is engaged on temporary basis at our Rishimangalam Branch has also attained the eligibility norms.....". It is not known what was the authority of Branch Manager of Thiruvananthapuram Branch to recommend the case of another Branch. The letter was written on 23-8-1993. Exts. M 1 series are Muster rolls of officers and staff of Rishimangalam Branch for the period January, 1987 to December, 1997.

They show that Shri Neelakantan was the Manager from December, 1991 to January 1996. Since the worker wanted the Muster Roll of August, 1993 itself, later that was also produced on 21-12-2004 by the management, but not seen marked. That shows that Shri Neelakantan was the Branch Manager of Rishimangalam Branch in August, 1993 when Ext. W 1 was written. But WW 1 says that Ext. W 1 is signed by Shri Sreenivasan and he was the Assistant Regional Manager. But Ext. W 1 is signed by Branch Manager, Thiruvananthapuram and addressed to Regional Manager. There is no record to show that Shri Sreenivasan was Assistant Regional Manager. If he had written in his capacity as Assistant Regional Manager, why has he signed as Branch Manager and in the address of Thiruvananthapuram Branch? As per Ext. W 2 series circulars issued by Regional Manager the Branch Managers were advised to forward details of temporary employees who had completed 180 days, showing all particulars shown in the format, to the Regional Office. No such details of the worker is seen sent from Rishimangalam Branch to Regional Office. If at all the candidature of Miss. Vijayalekshmi was to be recommended, it was to be done by Branch Manager of Rishimangalam Branch and not by Branch Manager of Thiruvananthapuram. No details are available with regard to age and qualification of Miss. Vijayalekshmi to know whether she was eligible for selection to the post of peon. A mere recommendation cannot substitute eligibility criteria or confer a right on the candidate. The selection process is to be done in the Regional Office and it is for them to ascertain whether eligibility norms are satisfied. Each Branch will have to furnish details to Regional Office for determining the eligibility. That decision cannot be taken by a Branch Manager. Moreover the worker (WW 1) says that Thiruvananthapuram Branch may not have her employment details and it is not the concern of Thiruvananthapuram Branch Manager to ascertain her employment details and he cannot know also.

6. Ext. W 5 is a circular issued by union to its various units in which it is mentioned that five of temporary employees were chosen for the test for selection to the post of peon. One of the five is Miss. Vijayalekshmi. None of the office bearers of union is examined to test the correctness of the contents of Ext. W 5. Therefore Ext. W 5, a document of the union, cannot be taken as admission on the part of management regarding eligibility for selection as peon or temporary employment of Miss. Vijayalekshmi in bank.

7. No doubt daily wage Registers and P&L Registers for the period January to December, 1987 pertaining to casual workers were called for by the worker as per petition dated 23-11-2004. The management did not produce them, but filed an affidavit saying that they were not traceable and probably destroyed. It is averred in the affidavit that even as per RBI Rules, records need be preserved for a maximum period of 8 years only. It is mentioned in Ext. W 4

reply by Management to Assistant Labour Commissioner that normally miscellaneous records are kept only for a period of 5 years. The registers of the period of 1987 is asked for in the year 2004, after 17 years. Bank cannot be expected to preserve them so long. The industrial dispute itself was raised in 2002. How could the bank foresee the need for daily wage Registers of 1987 in a future litigation of 2002. Naturally those registers in all probability would have been destroyed. The case of management is probable. Therefore no adverse inference can be drawn against the management for non-production of records.

8. Neither in pleadings nor in evidence the management has admitted employment of worker in bank, let alone continuous employment. Payments to casual or temporary workers should have been made as per vouchers. They are not called for and even if called for, would not be available at this distance of time. No co-worker (any sub-staff of bank) is examined to support worker's case. There are no records worth reliable to prove employment. Thus the worker has not been able to prove that she was employed (even if temporary or casual) in Kishimangalam Branch at any point of time.

Point No. (2) :

9. The worker says that she was working continuously for a period of ten years and at any rate she has worked continuously for 240 days of 12 calendar months in an year and therefore she cannot be sent away barchanded and the bank is bound to comply with S-25F of I.D. Act. She also claims that she is entitled to be absorbed.

10. I have already found that in the wake of denial by bank that she was an employee of bank it was necessary for the worker to prove the factum of employment and that she has failed in that attempt. It follows that there can be no evidence regarding continuous service for 180 days as mentioned in Ext. W2 series circulars regarding temporary employees or 240 days as required in S-25F read with S-25B (2) (a) (ii) of I.D. Act to call the alleged termination, illegal. But for Ext. W 1, there is absolutely no evidence regarding employment and continuous service. I have already found why Ext. W 1 cannot be accepted as proof of employment or continuous service. For brevity repetition is avoided. The burden is on the worker to prove continuous service. There is a catena of decisions on that aspect and suffice it to refer to a few of them :

1. *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan* (2004) 8 SCC 161.
2. *Municipal Corpn. Faridabad v. Siri Nitwas* (2004) 8 SCC 195.
3. *H. L.D.A. v Jagmal Singh* 2006-III-L.J. 152.
4. *Yeikatti R.M. v. Assistant Executive Engineer* 2006-I-L.J. 442.

It is needless to say that the worker has not discharged her burden of proving continuous service and employment itself. Ext. W3 award of Industrial Tribunal Alapuzha referred by the worker is regarding another temporary employee and was set aside by Hon'ble High Court by Ext. W6 judgement and further considered in Writ Appeal judgement (Ext. W7) and remanded the matter to Industrial Tribunal. Thereafter the same Tribunal passed an award in favour of worker Shri V. Christopher. But again that award is under challenge before High Court and the

memorandum of W.P. is Ext. M2. Hence the award of Industrial Tribunal in that case cannot be taken into consideration in this case as it has not become final. Moreover the evidence in that case differs from this case.

11. The case of absorption does not arise in this case as the claimant has not been able to show that she was working in a permanent vacancy, even if she was a casual or temporary worker. Para 53 of *Secretary State of Karnataka v. Umadevi* (2006) 48CC 1 has no bearing on the facts of the present case as she has not been able even to show that she is a 'workman' within the definition of S-2(s) of I.D. Act. Besides, the reference is regarding legality of termination and reinstatement to the post that she claims to have held. But no right whatsoever has accrued to her. Therefore she is neither entitled for reinstatement nor for any other relief.

12. In the light of the reasons stated above I find that the action of the management in denying employment to Smt. K. Vijayalekshmi is legal and justified and she is not entitled for any relief. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant transcribed and typed by her, corrected and passed by me on this the 11th day of July, 2007.

P. L. NORBERT, Presiding Officer

ANNEX

Witness for the Worker :

WW1—Smt. K. Vijayalekshmi, 10-8-2004.

Witness for the Management :

MW1—Shri C.J. Dominic, 9-11-2004.

Exhibits for the Worker :

W1—Copy of letter dated 23.8.1993 issued by the Br. Manager of Central Bank of India in the Regional Office.

W2 series—Circulars (S Nos.) issued by Regional Office of Central Bank of India.

W3—Certified copy of award dated 19-7-2000 in I.D. 9/98 of I. T., Alapuzha.

W4—Photostat copy of letter No. TRO/PRS/2002-03 dated 29-5-2002 issued by Regional Office of Central Bank of India to ALC (C).

W5—Photostat copy of strike notice dated 13-8-1991 issued by General Secretary, Central Bank of India Employees' Union.

W6—Certified copy of judgement dated 16-6-2004 in O.P. 30611/2000 of Hon'ble HC of Kerala.

W7—Certified copy of judgement dated 13-9-2004 in W.A. 1544/04 of Hon'ble HC of Kerala.

W8—Certified copy of judgement dated 7-9-2004 in W.A. 1563/04 of Hon'ble HC of Kerala.

Exhibits for the Management :

M 1 series—Certified copies of Muster Rolls of Central Bank of India (46 pages).

M2—Copy of Memorandum of Writ Petition dated 20-6-2005 numbered as WP(Cy)/18525/05 before Hon'ble HC of Kerala.

नई दिल्ली, 18 जुलाई, 2007

AWARD

केस.अ. 2155.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधकों के संबद्ध निवासियों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अर्नाकुलम के पंचाट (संदर्भ संख्या 278/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/111/95-आईआर (बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2155.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.278/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and there workman, which was received by the Central Government on 17-7-2007.

[No. L-12012/111/95-IR (B-II)]

RAJINDER KUMAR, Desk Officer

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.L.B., Presiding Officer

(Tuesday the 3rd day of July, 2007, 12th Ashada 1929)

I.D. 278/2006

(I.D. 12/1996 of Labour Court, Ernakulam)

Workman/Union : The Joint Secretary Vijaya Bank
Workers' Organization 283, Pycrofts
Road, Triplicane Chennai -5

Adv. C. Anil Kumar.

Management : The Assistant General Manager
Vijaya Bank, Head Office
41/2, M.G. Road
Bangalore -1

Adv. Shri C.P. Sudhakara Prasad

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

"Whether the action of the management of Vijaya Bank, Bangalore in imposing the punishment of stoppage of two increments permanently on Shri P. Anil Kumar, Clerk vide their order dated 11-4-92 is legal and justified? If not, to what relief is the workman entitled?"

2. The facts of the case in brief are as follows:—

Shri P. Anil Kumar was a clerk of Vijaya Bank at Thiruvalla Branch. While so he was charge-sheeted on the allegation that on 1-6-1990 he connived with S/Shri T.S. Ashok Kumar and G.D. Nair (both clerks) in attempting to defraud Bank of Baroda, Thiruvalla Branch to the tune of Rs. 1,30,000. He was suspended from service. An investigation was conducted by two senior officers of the bank. In pursuance to the investigation report, the management conducted a domestic enquiry. In the enquiry the workman was found guilty of the charge of acting prejudicial to the interest of the bank and three increments were stopped with cumulative effect. In appeal filed by the workman the finding of Enquiry Officer was confirmed, but the punishment was modified to stoppage of two increments with cumulative effect. Aggrieved by that an industrial dispute was raised by the workman through union and hence the reference.

3. According to the union, the Enquiry Officer had violated the principles of natural justice, no proper opportunity was given to the workman to adduce evidence and he was denied opportunity to cross-examine management witnesses. The Enquiry Officer relied on materials collected behind the back of the workman. The Enquiry Officer had adopted a partisan approach in the enquiry. There are no materials to find the guilt of the workman. The Enquiry Officer has not properly appreciated the facts and evidence in the enquiry. The punishment imposed is shockingly disproportionate to the charges. There was inordinate delay in issuing charge-sheet to the workman. He was not allowed to peruse relevant documents for submitting reply to the charges. The management was aware that the workman had no role in the incident. But the management wanted to implicate the workman. The Disciplinary Authority has not given personal hearing on the proposed punishment. The appeal was dismissed without proper application of mind by the Appellate Authority. Hence the workman is entitled to be reinstated with all consequential benefits.

4. According to the management the charge-sheeted employee instead of submitting a reply to the charge-sheet requested to provide him certain documents without mentioning their relevance. There is no provision for supplying documents for the purpose of filing reply to charge-sheet. For the purpose of denying the charges it is not necessary to peruse documents. He was given sufficient opportunity to defend himself in the enquiry. He was defended by a union representative. He was given opportunity to cross-examine management witnesses and to adduce defence evidence. However he produced only one document which was marked and he himself gave statement. The Disciplinary Authority had given the workman opportunity to make submission on the proposed punishment. However the workman made a written submission. But he did not turn up for personal hearing. The Enquiry Officer on the basis of the materials on record came to a conclusion that the workman was guilty of the charge of acting prejudicial to the interest of the bank and hence the Disciplinary Authority imposed punishment of stoppage of three increments with cumulative effect. The Appellate Authority on proper appreciation of the facts and evidence recorded by the Enquiry Officer, concurred with the findings of the Enquiry Officer. However taking into consideration the totality of the circumstances the punishment was reduced to stoppage of two increments with cumulative effect. The punishment is proportionate to the gravity of the offence. The attempt to defraud a banking institution cannot be treated lightly. It will have demoralizing effect on other employees of the bank and affects the reputation of the bank. No interference in the matter of punishment or findings, is called for.

5. In the light of the above contentions the following points arise for consideration :

(1) Whether the finding is sustainable?

(2) Whether the punishment is proportionate to the misconduct?

The evidence consists of the oral testimony of Enquiry Officer (MWI) and documentary evidence of Exts. M 1 to M 9 on the side of management. It appears that when evidence was adduced before the State Labour Court the enquiry file (Ext. M1) did not contain all the documents marked by the Enquiry Officer during enquiry. Hence Exts. M2 to 9 documents were produced in the Labour Court as additional documents and they were marked.

6. Point No. (1):

Shri P. Anil Kumar, the workman in this case, entered service of Vijaya Bank, Thiruvalla Branch

on 15-6-1989 and he worked there till 6-9-1990. The charge is:

"The action of the CSE in retaining the cheque leaf No. 484240 illegally, passing it on to Sri Ashok Kumar, clerk knowingly for depositing the same in the clearing on 1-6-90 by filling in the cheque for Rs. 1,30,000 after forging the signature of the account holder and thereby facilitated the perpetration of the attempted fraud by Sri F.S. Ashok Kumar, clerk on Bank of Baroda, Thiruvalla branch are acts prejudicial to the interest of the bank, constituting gross mis-conduct under sub-clause (J) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966."

The proceedings of enquiry, Ext. M2 reveals that though the enquiry officer had decided to commence the enquiry on 8-5-1991, the workman had sought an adjournment on the ground that the Defence Representative (Joint Secretary of the Union) was away in Madras. The enquiry was adjourned to 10-5-1991. Again the workman sought adjournment on the ground that DR was unwell. Hence the enquiry was again adjourned to 10-8-1991. The enquiry was conducted on that day and on 12-8-1991. Four witnesses were examined and 14 documents were marked as Exts. M 1 to M 14 on the side of management. On the defence side the workman himself gave evidence and one document was marked as Ext. D 1. All the management witnesses were cross examined by the Defence Representative. The proceedings sheets also reveal that copies of documents relied on by the management were given on time to the workman. Thus the Enquiry Officer had complied with the principles of natural justice. The contention of the union that adequate opportunity was not given for defence evidence and for cross-examination of management witnesses, is not correct. So also the contention of the union that copies of documents were not furnished to the workman, is equally incorrect. Though these contentions were taken up in the claim statement when the matter came up for hearing the union did not insist for consideration of the validity of enquiry as a preliminary issue. Hence it is sufficient to say that the Enquiry Officer had followed the procedure for domestic enquiry and complied with the principles of natural justice.

7. The incident alleged happened at Thiruvalla Branch of Vijaya Bank. A cheque book having one cheque leaf of Bank of Baroda, Thiruvalla Branch and belonging to Shri G. Radhakrishnan was forgotten and left in the counter of Thiruvalla Branch of Vijaya Bank, while he had been in Vijaya Bank on 15-6-1989 to deposit a cheque of a co-employee of National Insurance Company where he was

working. He came to know of the loss of the cheque leaf only on 1-6-1990 when Bank of Baroda informed him that his cheque was presented for encashment of Rs. 1,30,000 on 1-6-1990. On the same day he was called to Vijaya Bank by the Branch Manager to ascertain the facts. Thereafter he had given Ext. M5 statement to the investigating officers of Vijaya Bank. He says in Ext. M5 that he had been to Vijaya Bank, Thiruvalla Branch on 15-6-1989 with cheque No. 747450 for Rs. 2767 ps. 01 drawn on Bank of Baroda of Thiruvalla Branch for crediting to the S/B account of Smt. B. Kamalakshiamma with Vijaya Bank, Thiruvalla Branch. At that time he had by oversight left a cheque book having one cheque leaf in the counter of Vijaya Bank. He had not noticed the mistake until he was informed by Bank of Baroda on 1-6-1990 that someone had presented his cheque for encashment of Rs. 1,30,000.

8. Ext. M4 is investigation report of two senior officers, one of whom was examined as MW 1 before the Enquiry Officer. The investigation report confirms the fact that Shri G. Radhakrishnan had been to the Vijaya Bank on 15-6-1989 for the purpose of depositing a cheque for collection and he had left a cheque leaf in the counter of Vijaya Bank. The reports also says that the cheque leaf came to the possession of the workman who was the clerk in the clearing section on 15-6-1989. The cheque was filled up showing the workman as drawee and signature of customer forged by a co-employee of workman, Shri Ashok Kumar and sent it back to the workman through a sub-staff (Shri John Varghese) on 1-6-1990. The workman after perusing the cheque sent it to clearing section through the same sub-staff. Shri D.G. Nair was the clerk in clearing section on 1-6-1990. He sent it for collection to Bank of Baroda. The cheque was returned as the signature of the customer was found forged. MW1, one of the investigating officers reports that the workman was in the clearing section on 15-6-1989 when Shri G. Radhakrishnan had approached the bank for depositing the cheque. The details of that cheque of Smt. B. Kamalakshiamma was entered in the clearing register and clearing scroll of Vijaya Bank, Thiruvalla Branch by the workman. When the workman gave evidence on the defence side he admitted that he was in the clearing section on 15-6-1989. But he denies having any role in the incident or having come in possession of the cheque in question. MW2 is the Branch Manager of Vijaya Bank. He came to know of the alleged transaction after the incident. MW3 is JND Collector of Vijaya Bank, Shri John Varghese. According to him on 1-6-1990 Shri T.S. Ashok Kumar had handed over a cheque to him to be entrusted to the workman, Shri Anil Kumar. He handed over the cheque to Shri Anil Kumar. After 10 minutes Shri Anil Kumar told him to give the cheque to clearing section. He obeyed the instruction and placed it in the clearing section where Shri D.G. Nair was the clearing clerk. But at that moment Shri

D.G. Nair was not in the seat. It is relevant to note that the incriminating statements of MW3 were not challenged in cross-examination of witness. The cross examination was on some other aspects. Just one question was put to the witness regarding incriminating circumstances and that was, whether MW3 had heard Shri Anil Kumar insisting Shri D.G. Nair to send the cheque for collection. The statement of MW3 that Shri Ashok Kumar had sent the cheque through MW3 to workman and after 10 minutes the workman had sent the cheque through MW3 to the clearing section is not questioned by the defence. It tantamounts to admission on the part of the defence. It was argued by the learned counsel for the union that the management was foisting a false case against the workman. However the union was not able to allege any motive on the part of either the Branch Manager or MW3 for implicating the workman in the incident. The allegation that MW3 is an obedient servant of the Branch Manager becomes irrelevant when the defence has nothing to say about the motive of MW2 or MW3 to incriminate the workman. The union has no case that either Branch Manager or the sub-staff (MW3) has any ill-will towards workman or enmity with him. When there is allegation and evidence regarding the role of Shri Ashok Kumar in the incident it was not necessary for the management to incriminate the workman. MW 4 is the Assistant Branch Manager of Vijaya Bank, Thiruvalla branch. According to him he came to know about the fraudulent transaction around 12.45 p.m. on 1-6-1990 when he received a call from Bank of Baroda. He says that the pay-in-slip of cheque for Rs. 2767 ps. 01 dated 15-6-1989 deposited by Shri G. Radhakrishnan is signed by him. That means Shri G. Radhakrishnan had been to bank to deposit a cheque for Rs. 2767.01 on 15-6-1989. It is true that the Enquiry Officer has found that there is no evidence to show that the workman had taken the disputed cheque (Ext. M8) from the counter of clearing section on 15-6-1989. However the Enquiry Officer found that the cheque was handed over to the workman by Shri Ashok Kumar through MW3 and it was returned to clearing section by the workman through MW3. On the same day the clearing clerk, D.G. Nair had forwarded the cheque for collection to Bank of Baroda. Thus the evidence and circumstance in the enquiry reveal that Shri G. Radhakrishnan had been to bank on 15-6-1989 and he had by mistake left a cheque leaf in the counter. That came into the hands of one of the employees of the bank which was utilized for presenting it and trying to encash an amount of Rs. 1,30,000. The attempt to encash the amount failed as the Bank of Baroda on verification of signature refused to clear the cheque and returned it. It was submitted by the learned counsel for the union that the management as well as employees of bank were aware that it was only a joke of the staff of the bank and not intended to defraud anyone. The cheque of the customer

is not a toy for the staff to play. Had there been sufficient amount in the customer's account and had the clearing clerk of Bank of Baroda by mistake had not verified the signature, the cheque would have been cleared and the transaction would have assumed serious proportions. The bank employees who know well the value of a cheque and the consequences in case of loss of a cheque by a customer, cannot be heard to say that they were playing a joke with a blank cheque of a customer. Had it been a joke they would have seen that the cheque was not sent for collection to another bank, having sent it for clearance to another bank and having found it unsuccessful, they now turn round and say that it was a joke. But so far as the customer is concerned it is not a joke. The workman cannot escape the fact that he was aware that he was the drawee of the cheque, no doubt written by a co-employee. But when it reached him he should have stopped the cheque and would have retained it with him either for returning it to the customer or to Bank of Baroda or for entrusting it to his own bank manager. On the other hand it was given to the clearing section for collection. The fact that signature was put by Shri Ashok Kumar without trying to imitate the signature of customer Shri G. Radhakrishnan, will not lessen the gravity of the misconduct of the workman for having sent it for collection with all the false entries and knowing them to be false.

9. In the light of the above circumstances the findings of the Inquiry Officer that the workman was aware of the disputed transaction and instead of retaining it, he had sent the cheque knowing it to be not genuine, to the clearing section for collection, do not call for any interference.

10. Point No. (2):

The punishment imposed by the Disciplinary Authority is stoppage of 3 increments with cumulative effect. This was reduced to stoppage of 2 increments with cumulative effect by the Appellate Authority. According to the union the punishment is shockingly disproportionate to the gravity of the charge. The misconduct proved is a major misconduct falling within Clause 19.5 (j) of 1st Bipartite Settlement. The punishment for gross misconduct is provided in Clause 19.6 of the Bipartite Settlement. It is the discretion of the management to impose any of the punishments under clause 19.6. The punishment being not one falling w/s 11-A of Industrial Disputes Act it is not for this court to interfere with. The position is supported by the decision in *Indian Aluminium Co. Ltd. v. Labour Court, Ranchi* 1991 —1-L.J. 328 at 333 (Pat D.B.). Hence no alteration in the matter of punishment can be made by this court. Besides, the punishment cannot be said to be disproportionate to the misconduct.

11. In the result, an award is passed finding that action of the management of Vijaya Bank in imposing the punishment of stoppage of two increments with cumulative effect on Shri P. Anil Kumar, Clerk vide their order dated 11-4-92, is legal and justified. The workman is not entitled for any relief. No cost. The award will take effect one month after its publication in the official Gazette.

(Dictated to the Personal Assistant, transcribed and typed by her corrected and passed by me on this the 3rd day of July, 2007).

P.L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman/Union :

Nil.

Witness for the Management:

MW1-

Exhibits for the Workman/Union:

Nil.

Exhibits for the Management:

- M1 -- Domestic enquiry file.
- M2 -- Proceedings of Enquiry.
- M3 -- Statement of JND Collector given to Branch Manager on 4-6-1990.
- M4 -- Investigating Report (Pages 1 to 30).
- M5-- Annexure -1 Statement of Shri G. Radhakrishnan before investigating officers on 15-6-1990.
- M6-- Statement of Shri Sivarakkrishnan, Asstt. Branch Manager submitted to investigating officers on 16-6-1990.
- M7-- Statement of Shri K.M. Mathew, Branch Manager before investigating officers on 16-6-1990.
- M8 -- Cheque dated 1-6-1990.
- M9-- Return memo of cheque dated 1-6-1990.

नई दिल्ली, 18 जुलाई, 2007

का.मा. 2156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध निष्पक्ष और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अप न्यायालय नं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/112/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/75/2001-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2156.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/112/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the employer in relation to the management of Dena Bank, and their workman, which was received by the Central Government on 16-7-2007.

[No. L-12012/75/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2,
MUMBAI

PRESENT A.A. Lad, Presiding Officer

Reference No. CGIT-2/112 of 2005

(Old Ref. CGIT-2/63 of 2001)

Employers in relation to the Management of Dena Bank
The Regional Manager,
Dena Bank
Dena Corporate Centre,
Personnel Department
C-10, B-Block, Bandra Kurla Complex
Bandra (E)
Mumbai-400 051
AND

Their Workmen
Mr. Satishkumar S. Nirankari
C-5, Sausang Bharati Society
Govind Nagar, Malad (E)
Mumbai-400 097.

APPEARANCES

For the Employer : Ms. Nandini Menon
Advocate

For the Workmen : Ms. Kunda N. Samant
Advocate

Mumbai, dated 5th June, 2007

AWARD

The Government of India, Ministry of Labour, by its order No. L-12012/75/2001 (IR (B-I)) dated 2/8-5-2001 in exercise of the powers conferred by clause (d) of sub-section (i) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Dena Bank, Mumbai in terminating the services of Shri

Satishkumar S. Nirankari, Sub-staff w.e.f. 31-5-1999 and non-regularisation in Bank's service in Sub-staff cadre is legal and justified? If not, what relief the workman, Sh. Satishkumar S. Nirankari is entitled?"

2. Claim Statement is filed by concerned workman at Ex-6 justifying the demand made by him regarding his termination dated 31-5-1999.

3. Said is challenged by the first party by filing reply Ex-12 justifying its action of termination challenged in the reference.

4. Issues are framed at Ex-14 and Award was passed by my predecessor on 9-5-2002 which was challenged before Hon'ble Bombay High Court. Hon'ble Bombay High Court by order dated 12-7-2005 disposed of Writ Petition No. 2579 of 2002 and sent matter back to this Tribunal for considering the date of entitlement of second party for confirmation in the employment.

5. Meanwhile Union by purshis Ex-47 informed that concerned workman is taken in the employment as per the order of Hon'ble High Court and as such second party does not want to proceed with the reference. Hence the order:

Order

Vide Ex-47 this reference is disposed of.

Dated 5-6-2007

A.A. LAD, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2,

Reference No. CGIT-2/112 of 2005

(Old Ref. CGIT-2/63 of 2001)

Between

Dena Bank.....First Party

and

S.S. Nirankari.....Second Party

MAY IT PLEASE THE HON'BLE TRIBUNAL

The Second Party workman, through the Advocate, had addressed a letter to the Advocate for the First Party, inquiring whether the case could be settled and if the workman could be regularised in the services of the 1st Party w.e.f. 2-5-2001 (date of reference of dispute to this Hon'ble Tribunal);

By a letter dated 12-4-2007, the first party informed their Advocate that the Bank was agreeable in principal to regularise the services of the 2nd party w.e.f. 2001 (2-5-2001). A copy of the Bank's letter dated 12-4-2007 is annexed hereto.

An order may be passed accordingly.

Mumbai Sd/-
5-6-2007 (Advocate for the 1st Party)

Order Sd/-
It is prayed by both & (Advocate for the 2nd Party)
admitted by 2nd party Sd/-
workman. So it is disposed (S. Nirankari) Workman
of accordingly.

Sd/-
(A.A. Lad)
Presiding Officer
5-6-07

नई दिल्ली, 18 जुलाई, 2007

का.आ. 2157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधकों के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण केंद्रों के पंचाट (संदर्भ संख्या 258/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-7-2007 को प्राप्त हुआ था :

[सं. एल-12012/445/1998-आई वार (बी 1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2157.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 258/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 18-7-2007.

[No. L-12012/445/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

Present: K. Jayaraman, (Presiding Officer)

INDUSTRIAL DISPUTE No. 258/2004

[Principal Labour Court CGID No. 201/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen) .

BETWEEN

Sri M. Velayutham I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India.

Z.O. Chennai. II Party/Management

APPEARANCE:

For the Petitioner : Sri V.S. Lakshman,
Authorised representative.

For the Management : M/s. K. Veeramani,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/445/98-IR(B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 201/99 and issued notices to both parties. Even though both sides entered appearance the I Party has not filed Claim Statement and he has not appeared before the Principal Labour Court. After the constitution of this CGIT-Cum-Labour Court, the said

dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No.258/2004 and issued notices to both parties. In spite of adjourning the case for several hearings, the Petitioner has not filed Claim Statement. Hence, the Petitioner was called absent and set ex-parte.

2. The Schedule mentioned in that order is as follows.—

"Whether the demand of the workman Shri M.Velayutham, wait list No.698 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. On behalf of the Respondent memo of objection/Counter Statement was filed, wherein it is alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 698 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the

temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31.3.97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 698 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

4. In these circumstances, the points for my consideration are :

(i) "Whether the demand of the Petitioner in-Wait List No. 698 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

5. When the matter was taken up for enquiry, it is reported by the special representative of the Petitioner that he has no instruction from the Petitioner and he is not appearing for the Petitioner and hence, the Petitioner was called absent and set ex parte. Since the Petitioner neither appeared before this Court nor filed the Claim Statement to substantiate his claim, I find the Petitioner is not interested in pursuing this dispute and hence, he is not entitled to any relief. No Costs.

6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

क.अ. 2158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुसूच में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 99/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार की 18-7-2007 को प्राप्त हुआ था।

[सं एल-12012/303/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 18-7-2007.

[No. I. 12012/303/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

K. Jayaraman, Presiding Officer

Industrial Dispute No. 99/2004

(Principal Labour Court CGIL No. 42/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

Between :

M. Manivel (deceased) : I Party/Petitioner

And

The Assistant General Manager, : II Party/Management
State Bank of India,
Region-I, Trichy.

Appearance :

For the Petitioner : Sri V.S. Ekambaram,
Authorised Representative

For the Management : M/s. V. Sundar Anandan,
Advocates

AWARD

The Central Government, Ministry of Labour *vide* Order No. 1-12012/303/98-IR(B-1) dated 2-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 42/99 and issued notices to both parties. But, the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 99/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

2 The Schedule mentioned in that order is as follows.

"Whether the demand of the workman Shri M.Manivel, wait list No.337 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3 The allegations of the Petitioner in the Claim Statement are briefly as follows.

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis in Karur ADB branch from 2-1-88. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karur ADB branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 2-1-88 the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While

working on temporary basis in Trichy branch, another the advertisement by Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

4 As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 13-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 337 in wait list of Zonal Office, Trichy. So far 312 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days

aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 337 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are:—

- (i) "Whether the demand of the Petitioner in Wait List No. 337 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No.1 & 2:—

8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner died and it is posed for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 4-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment thereon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Petitioner have no personal right to claim employment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, I find the claim is abated and thus, it is dismissed but without any costs.

10. Thus the reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

का.आ. 2159.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधक के संबद्ध नियोजकों और उनके कार्यकाओं के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के पंचाट (संदर्भ संख्या 74/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/107/1998-आई.अर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2159.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2004) of the Central Govt. Industrial Tribunal cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of State Bank of India and their workmen, received by the Central Government on 18-07-2007.

[No. L-12012/107/1998-IR (B-1),

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 74/2004

(Principal Labour Court CGID No. 161/99)

In the matter of the dispute for adjudication under clause (3) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri A. Mony : I Party/Petitioner

AND

The Assistant General Manager. : II Party/Management
State Bank of India, Z.O.
Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,

Authorised Representative.

For the Management : Mr. D. Mukundan, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/107/98-IR(B-1) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 161/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum-Labour Court, the said dispute has been transferred to this Tribunal for Adjudication and this Tribunal has numbered it as L.D. No. 74/2004.

1. The Schedule mentioned in that order is as follows

"Whether the demand of the workman Sri A. Mony, wait list No. 375 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kuzhithurai branch from 16-03-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petitioner filed by State Bank Employees' Union in Writ Petition No. 542/97 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kuzhithurai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-03-1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kuzhithurai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his

non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious (injustices and) it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India

Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 375 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 375 he was not appointed. The said settlements were bona-fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under notified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are—

- (i) "Whether the demand of the Petitioner in Wait List No. 375 for restoring the wait list of temporary

messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point Nos. 1 & 2 :—

8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner also has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set aside.

9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1984 and worked as a temporary messenger and during the year 1986-87 he was disengaged from service and again he was engaged as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the I.D. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner are not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

का.आ. 2160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार सेन्ट्रल रेलवे के प्रबंधकों के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण सं. 11 मुम्बई के पंचाट (संदर्भ संख्या 86/2001) को प्रकाशित करती है, जो केंद्रीय सरकार को 18-7-2007 को प्राप्त हुआ था।

[सं. एल-3/2011/14/2001-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2001) of the Central Govt. Industrial Tribunal-cum-Labour Court-II, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Central Railway and their workmen, received by the Central Government on 18-07-2007.

[No. L-4311/14/2001 IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI
PRESIDENT

A. A. LAD, Presiding Officer

Reference No. CGIT-2/86 of 2001

Employers in relation to the Management of Central Railway,
 Mumbai

The Chief Workshop Manager Central Railway Parel,
 Mumbai-400 012.

AND

Their Workmen

The Secretary, Indian Railway Technical Staff
 Association

1, Mahavir Yadav Chawl
 Gundawali Hill, Nagardas Road, Andheri (E)
 Mumbai-400 069.

APPEARANCES

For the Employer : Mr. D.G. Dhongade
 Representative

For the Workmen : Mr. A.B. Mishra
 Representative

Mumbai, Dated 26th April, 2007.

AWARD

The Government of India, Ministry of Labour by its Order No. L-41011/14/2001/TR/(B-I) dtd. 20-06-2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of the Chief Workshop Manager, Central Railway, Parel in not paying the wages for 2 days i.e. on 21-09-99 and 22-09-99 in respect of around 4000 workers is justified? If not, what relief the workmen are entitled?"

3. Claim statement is filed by the Representative of the workmen at Ex-8 stating that, the workmen involved in the reference have been denied their wages by Management of 21-09-1999 of Second shift of general shift and wages of first and second half on 21-01-99. Management also denied wages of these workmen of all shifts of 22-09-99 without any reason or without holding enquiry or without obtaining explanation from the concerned workmen.

3. On those days, these workmen were on duty. The principle followed by management of 'no work no pay' in not giving wages of above dates and period has no logic.

4. These workmen are mainly engaged in maintenance and repair of locomotives of various types. Their activities are carried out in shift round the clock. 95% of them are of labourer category working with Parel Workshop.

5. According to Second Party, on 21-09-99 all these workmen joined in their respective duties in general shift at about 10.30 hrs. Some unknown persons entered in to the

workshop and stopped work of these workmen. The members of management were available in relevant time but nobody enquired who were those persons and why they stopped work. Even same thing took place on 22-09-99. Since Management did not interfered or protect the workmen by calling security staff or police, some took shelter inside the workshop and some left workplace just to protect themselves from these goondas who entered unauthorisedly and without knowledge of these workmen. As a result of that, these workmen unable to punch their entry card vis-a-vis mark their presence. Even they unable to attend their regular work and without considering all that, management one sided decided to deduct the wages of the workmen of above dates and shifts by applying principle of 'no work no pay'. So it is prayed that, First party be directed to pay the wages of these 4000 workmen of Parel workshop and set aside impugned action of the first party with necessary reliefs.

6. This is objected by first party by filing reply at Ex-90 stating that, since these 4000 workmen did not work on those relevant periods on those dates, they are not entitled to wages of those days and period. Without any reason they stopped work. Since there was no work, principle of 'no work no pay' was followed by management regarding above period. When there was no work, the workmen involved are not entitled to wages of that period. It is alleged that, member of first party did not turn up on 21-09-99 and 22-09-99. Even they did not punch their card. Even they did not apply in advance for absenteeism and intimated their absence. Their act rather supports the said trespassers and without their help, trespassers cannot enter the workshop and disturb the working of first party. There is no provision to appoint security for the workers or call police for protection when 4000 workmen who were there. What is the necessity to have protection to them? In fact these workmen consented the activities of the trespassers allowed them to do it and enjoyed the said disturbance by remaining absent from duty or by not doing work. So it is submitted that, decision taken by it of not giving wages of these days involved in the reference was just proper and does not require any interference.

7. In view of above pleading my Ld. Predecessor framed issues at Ex. 21 which I answer as follows :

| Issues | Findings |
|--|------------------|
| 1. Whether the action of the management of the Chief Workshop Manager, Central Railway, Parel in not paying the wages for two days i.e. on 21-09-99 and 22-09-99 in respect of around 4000 workers is justified. | Yes |
| 2. What relief the workmen are entitled to? | Does not survive |

REASONS

Issues Nos. 1 & 2 :

8. By raising dispute of non payment of wages of 21st Sept. 1999 and 22nd Sept. 1999 of about 4000 workmen

by the first party. Second party made out case that, these workmen were not responsible for not doing work since sufficient protection was not given by management nor any of the management's person protected these workmen and guided them in that situation. Whereas stand of the first party is that, these workmen were responsible for that entire scene which occurred on those days. Even most of them were absent. Who were present did not work. They did not work on those days in the above period and it was just and proper to apply principle of 'no work no pay'.

9. To support that Second party examined B. M. Shukla by filing affidavit at Ex-22. Against that no evidence led by first party. Written arguments are submitted by second party at Ex. 35 with some citations and by first party at Ex. 36.

10. The evidence available of Shukla for second party is concerned, filed at Ex-2, will find he state that, on 21-09-99 he learnt that fact on telephone regarding serious unrest in Patel Workshop on account of interruption of trespassers and when he reached there he met officer of Association as well as visited workshop along with the officers of first party. He noted that, there was fear on the face of the workmen due to terror created by unknown persons. He also noted that, punching booth was closed and there was no atmosphere of normal nature. He noted that, management's persons were not present. He noted that, agitations were going on mainly on entrance gate and they were preventing staff to enter into workshop. Even he noted same position on 22-09-99. According to him, workmen are not responsible for that. It is suggested that, there is no access to the outsiders in the workshop. It was also suggested that, workmen purposely remained absent on 21st and 22nd September, 1999 and did not work.

11. From this evidence it is clear that, none of the concerned workmen is examined by the second party to bring real picture on record. It is alleged that, there was tense atmosphere and some trespassers entered in the workshop and created terror. It is to be noted that, about 4000 workmen were there, it is not pointed out how, some of the persons can enter and create tense atmosphere when 4000 workers were present. It is matter of record that, all these were of labour category. When labourers are which were in strength of about 4000 and when it is not proved that, there is no easy access to the outsiders question arise how few people can command over situation against 4000 workers? No just and proper explanation is given by second party by leading evidence. They admit that, punching machine was not working and workmen did not work or attend their work. It means that, there was no work on those days during the above period and even it is not case of second party. When there was no work and when no just and proper explanation came from second party, when there were in all strength of about 4000, question arises how much they can be believed?

The case made out by them that, no management person came there, advised them, in my considered view

that does not arise, as mostly they were workers strength of 4000. Some of them may be supervisor and some of them may be of different category working there. Fact is that, there was no work on those days.

12. The question is raised by the second party questioning the action of the first party saying that, without holding enquiry or enquiring with the workmen how action is sustainable? In my considered view in peculiar circumstance which occurred in two days and that to in particular period of those two days how invite management to question all 4000 and enquire with them and then take action? According to me, it was not feasible as well as possible. It is matter of record that, about 4000 workmen were working in that said workshop. It was period of two days. Work was not done on those two days. No any other serious action of discipline was taken. So action taken of stopping wages of those days if taken in that scenario, I am of the view that, it was just and proper. It is not case of the second party that, partiality was shown by first party and some were paid on those days and some were not. It is not case that, some favour was shown to some employees and harsh and extreme action was taken by the first party against some group.

First party simply did not pay wages of those days for which they did not work and it was made applicable to all who were on roll on those days.

13. Number of citations referred by second party i.e. copy of order passed in civil appeal No. 5047 of 1998. Citation published in 1990 (JV) SCC 744, & Citation published in AIR 1967 SC 1269 as well as citation published in 1994 SCC (L & S) page 1320, Citation published in 1980 SCC (L & S) page 145, are on different footing. In civil appeal of 5047 of 1998, where there was the question of granting special leave and other privileges and it was under consideration. In case of Bank of India V/s. Kelevala and Ors. (1990 JV SCC page 744) there was point of non-payment of wages though workmen were present on work. In our case most of the workmen were absent on those days and that point is not disputed by second party. The citation of Bhagwan Shukla Vs. Union of India published in 1994 SCC (L & S) 1230 is also on different footing as in that case there was a question of payment of probation which was wrongly fixed.

14. If we consider all these coupled with decision taken by first party, which was taken in general without making any discrimination and partiality, which was universe against all pertaining to that period, I am of the view that, said action does not require any interference. So I answer the above issues to that effect and passes following order:—

ORDER

Reference is rejected with no order as to costs.

Date: 26-04-2007

A. A. LAD, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

कर.आ. 2161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोक्ताओं और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, गुवाहाटी को मंचाट (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/98/2005-आई आर (डोयू)]

सुरेन्द्र सिंह डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2006) of the Central Government Industrial Tribunal-cum Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/98/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT TRIBUNAL-
CUM-LABOUR COURT, GUWAHATI, ASSAM.
PRESENT

Shri H.A. Huzarika,
Presiding Officer,
CGIT-cum-Labour Court,
Guwahati.

Reference Case No. 11 of 2006

In the matter of an Industrial Dispute between:—

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Kulendra Sinha.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate

For the Management : Mr. D. Sar, Advocate.

Date of Award : 06-07-2007

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/98/2005-IR (DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Kulendra Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause(d) of Sub Section (1) and Sub Section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Kulendra Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to

what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 11/2006 as per Procedure.

3. The case of the workman Sri Kulendra Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and had in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee cannot be terminated without any reason assigning to them.

10. That the workman claims that he is entitled to have benefits w/s 25-G, 25-H of the I.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularize the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (PT) dated 12-02-1999 the authority of all DOT Officers

for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and arguments about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. I have carefully gone through the documents submitted by both the parties. The Workman Sri Kulendra Sinha remained absent on the date fixed for evidence and adduced no evidence and the evidence of the Management recorded *ex parte*. The reason behind is that the learned Advocate Mr. M.K. Jain refused to represent the workman. The evidence of the Management witness Sri Bijon Behari Nath is recorded *ex parte* who has categorically stated that he does not know the workman. The Management witness is declined to be cross examined by the Advocate Mr. M.K. Jain. Advocate for the workman who was present at the time of recording the evidence of the Management. For ends of justice, on careful scrutiny of the documents in the record I find the workman has not called any document to prove that he was engaged by the Management as casual labourer. What I find there is not acceptable evidence for the workman to accept him as casual labourer under BSNL. The workman is not entitled for any relief. What I find the alleged workman Sri Kulendra Sinha is not entitled for any relief. In the result, the claim of the alleged workman Sri Kulendra Sinha is rejected.

15. Prepare the Award and send it to the authority concerned as per procedure confidentially and immediately.

H A HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार दूर संचार विभाग के प्रबंधन के सदस्य नियोजकों और उनके कर्मियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिनियम, 1947 के अधिनियम 1947/14 के धारा 17 (संदर्भ संख्या 10/2006) को प्रकाशित करती है, जो केंद्रीय सरकार को 19-7-2007 को अपना हुआ है।

[स. एल. 40012/97/2005-आई.आर. (डी.ए.)]

सुरेंद्र कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman,

which was received by the Central Government on 19-7-2007.

[No. L-40012/97/2005-IR (DI)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL,
TRIBUNAL-CUM-LABOUR COURT, GUWAHATI,
ASSAM

PRESENT

Shri H A Hazarika,

Presiding Officer,

CGIT-cum-Labour Court,

Guwahati.

Reference Case No. 10 of 2006

In the matter of an Industrial Dispute between:—

The Management of BSNL, Silchar

Vs.

Their Workman Sri Chandra Sekhar Sinha.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate

For the Management : Mr. D. Sar, Advocate.

Date of Award: 06-07-2007

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/97/2005-IR (DI) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Chandra Sekhar Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause(d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Sri Chandra Sekhar Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 10/2006 as per Procedure

3. The case of the workman Sri Chandra Sekhar Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Rolf and Daily Rated Mazdur and he worked for the development of Network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from this claim.

8. That under Articles 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and Temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit pts. 25-G, 25-H of the I.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL, attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. On careful scrutiny of the evidence I find the workman Sri Chandra Sekhar Sinha claimed that he was engaged as Casual Labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Ext. A wherein it is reflected that he worked for 578 days only in 3 years. That document as he said is received from one Namar Ali countersigned by one Sub-Divisional Officer, Phones, Silchar Sub-Division. But to prove this document he has not called original document such as, Attendance Register, Payment register, Etc. This document is not authentic on the ground that it has got an issue No. from the Office. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in in his cross-examination that he was assured for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit under the Scheme of Status of Casual Labourer which goes like this:

"5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently-employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

Further I find the matter is inordinately delayed and as per Annexure-VI submitted by the Management as the matter is time barred. The Management witness Lachman Lal Bhat deposed that the workman is not the workman of BSNL. On scrutiny I find the workman Sri Chandra Sekhar Sinha entirely failed to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the alleged workman Sri Chandra Sekhar Sinha is not entitled to for any relief. In the result, the claim of the workman Sri Chandra Sekhar Sinha is rejected.

15. Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

कलआ. 2163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय गुवाहाटी के पंचट (संदर्भ संख्या 9/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

(सं. एल 400/2/96/2005 आई आर (डोयू)।

सुरेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2163.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19.7.2007.

[No. L-40012/96/2005-IR (DL)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM PRESENT

Shri H.A. Hazarika,
Presiding Officer,
CGIT-cum Labour Court,
Guwahati.

Reference Case No. 09 of 2006

In the matter of an Industrial Dispute between:—

The Management of BSNL, Silchar.

Vs.

Their Workman Sri Nurul Amin Laskar.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate

For the Management : Mr. D. Sur Advocate.

Date of Award : 6.7.07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/96/2005-IR (DL) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Nurul Amin Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Nurul Amin Laskar for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 9/2006 as per Procedure.

3. The case of the workman Sri Nurul Amin Laskar in brief that he was in department of Telecommunication

under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdur in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Articles 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit u/s 25-G, 25-I) of the I.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93 STN II (Pt) 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all

Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. On careful scrutiny of the evidence I find the workman Sri Nurul Amin Laskar claimed that he was engaged as Casual Labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Ext.A wherein it is reflected that he worked for 393 days only in 3 years. That document as he said is received from one Namar Ali countersigned by one Sub-Divisional Officer, Phobes, Sitchar Sub-Division. But to prove this document he has not called any original document such as, Attendance Register, Payment register, etc. This document is not authentic on the ground that it has got no issue No. from the Officer. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in his cross-examination that he was assured for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit under the Scheme of Status of Casual Labourer which goes like this :

“3. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor.”

Further I find the matter is inordinately delayed and as per Annexure-VI submitted by the Management as the matter is time barred. The Management witness Lachman Lal Bhar deposed that the workman is not the workman of BSNL. On scrutiny I find the workman Sri Nurul Amin Laskar entirely failed to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the alleged workman Sri Nurul Amin Laskar is not entitled to for any relief. In the result, the claim of the workman Sri Nurul Amin Laskar is rejected.

15. Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.अ. 2164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संघट्ट नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अस न्यायालय, गुवाहाटी के पंचद (संदर्भ संख्या 8/2006) को एकांकित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/95/2005-आई आर (डीयू)]

सुरेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2164.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/95/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, GUWAHATI,
ASSAM

PRESENT:

Shri H.A. Hazarika,
Presiding Officer,
CGIT-cum-Labour Court,
Guwahati

Reference Case No. 68 of 2006

In the matter of an Industrial Dispute between:—

The Management of BSNL, Sitchar

Vrs.

Their Workman Sri Gopal Singh

APPEARANCES:

For the Workman : Mr. M.K. Jain, Advocate

For the Management : Mr. D. Sur, Advocate.

Date of Award : 05-07-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/95/2005-IR (DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Sitchar, and their Workman, Sri Gopal Singh to adjudicate and to pass

an award on the strength of powers conferred by Clause(d) of sub-section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Gopal Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 08/2006 as per Procedure.

3. The case of the workman Sri Gopal Sinha in brief that he was in department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously, he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on A/C-17.

6. That for many many year the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub Inspector (phone) Mr. Nannar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DO 11/1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Articles 33 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit U/s 25-G, 25-H of the I.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL DOT in brief that the workman never worked in service or employment in BSNL DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourers is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15-16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. I have carefully gone through the documents submitted by both the parties. The Workman Gopal Sinha remained absent on the date fixed for evidence and adduced no evidence and the evidence of the Management recorded *ex parte*. The reason behind is that the learned Advocate Mr. M.K. Jain refused to represent the workman. The evidence of the Management witness Sri Bijon Behari Nath is recorded *ex parte* who has categorically stated that he does not know the workman. The Management witness is declined to cross examined by the Advocate Mr. M.K. Jain, Advocate for the workman who was present at the time of recording the evidence of the Management. For ends of justice, on careful scrutiny of the documents in the record I find the workman has not called any document to prove that he was engaged by the Management as casual labourer. What I find there is not acceptable evidence for the workman to accept him as casual labourer under BSNL. The workman is not entitled for any relief. What I find the alleged workman Sri Gopal Sinha is not entitled for any relief. In the result, the claim of the alleged workman Gopal Sinha is rejected.

15. Prepare the Award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथवा न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 7/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/94/2005-आईएमए(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/94/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM

PRESENT

Shri H. A. HAZARIKA, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 7 of 2006

In the matter of an Industrial Dispute between :—

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Monimoy Sinha

APPEARANCES

For the Workman : Mr. M. K. Jain, Advocate.

For the Management : Mr. D. Sur, Advocate

Dated of Award 5-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/94/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar and their Workman, Sri Monimoy Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Monimoy Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceeding is proceeded here for disposal being numbered J 7/2006 as per Procedure.

3. The case of the workman Sri Monimoy Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notices of justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269/10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual Labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Amar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the I.D. Act. 1947.

Under the circumstances the workman prayed in pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL, has no liability to regularized the Applicant labourer.

12. That the DOT New Delhi vide No. 269-4/93-STN II (Pt.) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the management prayed to dismiss the claim of the alleged workman.

14. On careful scrutiny of the evidence I find the workman Sri Monimoy Sinha claimed that he was engaged as Casual labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Ex. A wherein it is reflected that he worked for 470 days only in 3 years. That document as he said is received from one Narendra Ch. Mulakar countersigned by one Sub-Divisional Officer, Phones, Silchar Sub-Division. But to prove this document he has not called any original document such as, Attendance Register, Payment Register, etc. This document is not authentic on the ground that it has got no issue No. from the Office. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in his cross-examination that he was assured for last 15 years for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit under the Scheme of Status of Casual Labourer which goes like this:

-5. Temporary Status-

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which the must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

Further I find the matter is inordinately delayed and as per Annexure VI submitted by the Management as the

matter is time barred. The Management witness Lachman Lal Bhar deposed that the workman is not the workman of BSNL. On scrutiny I find the workman Sri Monimoy Sinha entirely failed to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the alleged workman Sri Monimoy Sinha is not entitled to for any relief. In the result the claim of the workman Sri Monimoy Sinha is rejected.

15. Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार मैं, केंद्रीय सरकार दूर संचार विभाग के प्रबंधन के समक्ष निवेदकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/असम न्यायालय, गुवाहाटी की कंचाट (संदर्भ संख्या 6/2006) को प्रकाशित करती हूँ, जो केंद्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एन 2001/293/2005-आई आर (डीयू):]

सुरेंद्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-4001/293/2005 TR (DCL)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Shri H.A. Hazarika, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 6 of 2006

In the matter of an Industrial Dispute between :

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Dabul Ahmed Laskar

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate,

For the Management : Mr. D. San, Advocate

Date of Award 5-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its Order No. L-40012/93/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Babul Ahmed Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Sri Babul Ahmed Laskar for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being numbered 6/2006 as per procedure.

3. The case of the workman Sri Babul Ahmed Laskar, in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notices of justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual

Labourers under the grant of temporary status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Articles 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the I.D Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pl.) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman Sri Babul Ahmed Lashkar. He claimed that he was engaged as casual labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu of notice. That his case is not time barred as he approached the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the workman worked continuously for 240 days in a year to get relief under the scheme. No original documents were called, no attendance Register is called to prove his claim. A certificate is given by the workman in which it is reflected that he worked in 1992—128 days; in 1993-238 days. This document is also not proved as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casual Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to

prove his claim. Further he is not within the Scheme as under:

15. Temporary Status

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of officers observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time barred as per Annexure-VI of the Management.

15. It is pertinent to note here that Sri Lachmal Lal Bhar who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.

16. Under the above facts and circumstances what I find the alleged workman Sri Babul Ahmed Laskar is not entitled for any relief and his claim is rejected.

17. Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधकों के संबद्ध निरोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अन न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या S/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था :

[सं. एल-40012/86/2005-आई.आर.(टी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No L-40012/86/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H.A. HAZARIKA, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 5 of 2006

In the matter of an Industrial Dispute between :—

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Ashok Kumar Paul.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate.

For the Management : Mr. D. Sur, Advocate

Dated of Award 5-7-07

AWARD

1. The Government of India, Ministry of labour, New Delhi, vide its order No. L-40012/86/2005-IR (DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Ashok Kumar Paul to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Ashok Kumar Paul for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date ?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 05/2006 as per Procedure.

3. The case of the workman Sri Ashok Kumar Paul in brief that he was in department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the Working days list before the authority but the authority paid no head to it

and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No.269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual Labourer from 1988. But the Petitioner/Claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Numar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the I.D.Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN D(Pt) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour

Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman Sri Ashok Kumar Paul. He claimed that he was engaged as casual labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu of notice. That his case is not time barred as he approached the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the workman worked continuously for 240 days in a year to get relief under the Scheme. No original documents were called, no attendance Register is called to prove his claim. A Certificate is given by the workman in which it is reflected that he worked in 1989-207 days; in 1990-208 days in 1991-230 days. This document is also not proved as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casual Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to prove his claim. Further he is not within the Scheme as under:

"5. Temporary Status

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time barred as per Annexure-VI of the Management.

15. It is pertinent to note here that Sri Lachmal Lal Bhat who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.

16. Under the above facts and circumstances what I find the alleged workman Sri Ashok Kumar Paul is not entitled for any relief and his claim is rejected.

17. Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

कर.अ. 2168.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधकों के संलग्न निवेदकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 4/2006) को प्रकथित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/85/2005-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/85/2005-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM

PRESENT:

Sri H.A. HAZARIKA, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 4 of 2006

In the matter of an Industrial Dispute between :-

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Rakesh Sinha

APPEARANCES

For the Workman : Mr. M. K. Jain, Advocate.

For the Management : Mr. D. Sur, Advocate

Date of Award 4-7-2007

AWARD

1. The Government of India, Ministry of labour, New Delhi, vide its Order No. L-40012/85/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Rakesh Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Sri Rakesh Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and which from date?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being numbered 4/2006 as per procedure.

3. The case of the workman Sri Rakesh Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269/1089 STN dated 7-11-89 whereby it is banned the engagement/employment of Casual Labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the I.D. Act 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-493-STM II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-affidavit filed by the workman Sri Rakesh Sinha. He claimed that he was engaged as Casual Labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu of notice. That his case is not time barred as he approached the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the Workman worked continuously for 240 days in a year to get relief under the Scheme. No original documents were called, no attendance Register is called to prove his claim. A Certificate is given by the workman in which it is reflected that he worked in 1989-165 days; in 1990-169 days and in 1991-152 days. This document is also not prove as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casual Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to prove his claim. Further he is not within the Scheme as under :

"5. Temporary Status

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time barred as per Annexure-VI of the Management.

15. It is pertinent to note here that Sri Lachman Lal Bhar who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.

16. Under the above facts and circumstances what I find the alleged workman Sri Sinha is not entitled for any relief and his claim is rejected.

17. Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

कार.अ. 2169.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संयुक्त नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय, गुवाहाटी के पंचद (संदर्भ संख्या 3/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/84/2005-आईआर(सीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/84/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Sri H. A. HAZARIKA, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 3 of 2006

In the matter of an Industrial Dispute between :—

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Santa Sinha

APPEARANCES:

For the Workman : Mr. M. K. Jain, Advocate.
 For the Management : Mr. D. Sur, Advocate
 Date of Award 4-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/84/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Santa Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Santa Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 3/2006 as per Procedure.

3. The case of the workman Sri Santa Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Muster Roll and Daily Rated Mazdoor and he worked for the development of network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice of justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. the workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit u/s 25-G, 25 H of the I.D. Act 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence deposed by Sri Lachman Lal Bhar, Divisional Engineer Vigilance, BSNL, who is cross examined by the learned Advocate Mr. M. K. Jain for the workman Sri Santa Sinha. In his evidence-in-Affidavit the workman stated that he was working under BSNL, Department of Telecommunication, Silchar, on the basis of MR & DRM and worked for total period of 459 days. He also stated that he was retrenched by the Management without giving any notice and without paying wages in lieu of Notice. As per Scheme introduced by the DOT, New Delhi he ought to have been regularized but he is not regularized though he was assured by the Management to regularize him. As per claim, as he worked 240 days as engaged casual labourer he ought to have been regularized. In cross examination part he has deposed that no appointment letter was issued to him. A certificate was issued that he worked under BSNL for 459 days. He filed the case after a long time for want of money.

15 I have gone through the certificate issued by Namar Ali, S. I. Phone countersigned by an Sub-Divisional Engineer, Phone. In this certificate no issue No. as per procedure is given. No original is called. This is related to financial matter, there must be financial record to prove this document. Hence, in my opinion this document is not authentic and acceptable as evidence. Further I find the workman Sri Santa Sinha could not prove that he falls in any Scheme for regularization. In Annexure-III there is a definition as regards Temporary Status which is as follows:

"5. Temporary Status

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

The workman Sri Santa Sinha could not prove that he was engaged by the Management and worked continuously for 240 days in a year. Further I also find as per Annexure-VI his claim is time barred.

16. Under the above facts and circumstances what I find that the workman could not establish that he was engaged by the Management and acquired temporary status to be regularized.

17. In the result, I find the Workman Sri Santa Sinha is not entitled for any relief and his claim is rejected.

18. Prepare the award and send it to the concerning authority confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2170.—औद्योगिक विवाद अधिनियम, 1947 (1947 क. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधक के संवाद निरीक्षकों और उनके कर्मचारों के बीच, अनुरोध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अस न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 2/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/83/2005-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/83/2005-IR(DU)]

SURENDRA SENGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM

PRESENT :

Shri H. A. HAZARIKA, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. #2 of 2006

In the matter of an Industrial Dispute between :—

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Fayaj Uddin Laskar.

APPEARANCES :

For the Workman : Mr. M. K. Jain, Advocate.

For the Management : Mr. D. Sur, Advocate

Dated of Award 4-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/83/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Fayaj Uddin Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Fayaj Uddin Laskar for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date ?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 2/2006 as per procedure.

3. The case of the workman Sri Fayaj Uddin Laskar in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized; the workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC-17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claims that he is entitled to have benefit u/s 25-G, 25-H of the LD Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularize the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman. The workman is not cross examined by the Management Advocate. The Advocate for the Workman submitted that he is not willing to proceed with the case as the workman is not willing to keep contact to him.

Perusal the evidence desposed by Sri Bijan Behari Nath, Sr. S.D.E., Legal, BSNL, Sikhar. He has deposed that the alleged workman is not employee of the Management. He was never appointed by the Management. No appointment letter was issued to him. He is not cross-examined by the learned Advocate Mr. M.K. Jain. The reason behind it is that the workman remain absent. However I have perused all the relevant documents and evidence-in-Affidavit of the workman. I find the workman Fayaz Uddin Ahmed though claimed that he worked 530 days yet I found he has not worked 240 days continuous work in a year. Further there is no evidence of creation of posts of Grade-D or casual labour to give him status and regularization of casual labourer. He has submitted a list of working days but that has not been proved as per procedure. No documents is called from the end of the Management even the Attendance Register. The matter as per Annexure-VI of the Management is fatal due to inordinate delay. All in all I find the workman side is failed to establish that he was a casual labourer at any time under the Management. It is very much important to note here that to acquire temporary status the following condition is to be proved by the workman and in the instant case the workman entirely failed to prove it.

“5. Temporary Status

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor.”

16. In the result, what I find the Workman is not entitled for any relief he claimed and his claim is rejected. Accordingly prepare the award and send it confidentially to the authority concerned immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2171.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्राग 17 के अनुसरण में, केंद्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 1/2006)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-40012/82/2005-आईआर(सीवू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No.L-40012/82/2005-IR (DU)]

SURENDRA SINGH, Desk Officer
ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM

PRESENT:

Shri H. A. HAZARIKA, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 81 of 2006

In the matter of an Industrial Dispute between :—

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Anil Sinha

APPEARANCES

For the Workman : Mr. M. K. Jain, Advocate

For the Management : Mr. D. Sur, Advocate

Dated of Award 4-7-07

AWARD

1. The Government of India, Ministry of labour, New Delhi, vide its order No. L-40012/82/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Anil Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Anil Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal justified? If so, to what relief the workman is entitled and from which date?"

2. On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 1/2006 as per Procedure.

3. The case of the workman Sri Anil Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.

6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namur Ali submitted to Labour Commissioner.

7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.

9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

10. That the workman claim that he is entitled to have benefit U/s 25-G, 25-H of the I.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment

in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman. Also perused the cross examination made by Mr. D. Sur, Advocate for the Management. Also perused the evidence deposed by Sri Lachman Lal Bhar for the Management, who is cross-examined by the learned Advocate Mr. M.K. Jain for the workman. The brief content of the evidence submitted by the workman Anil Sinha that he was a BSNL employee worked for total period 483 days. That he is illegally retrenched by the Management without notice and without paid in lieu of Notice. That he ought to have been regularized as he has worked for 240 days in a year. That he has submitted in Ext. A a certificate issued by Jamsar Ali, Sub-Inspector, Phone under whom he worked for 483 days. In cross-examination part he has admitted that no appointment letter was issued to him. That presently he is not working under BSNL. In cross-examination part he has also admitted that the matter became time barred due to pretext by the Management as management assured him to regularize time to time Ext. A is the list of working days, he worked.

15. The witness for the Management deposed that workman is not known to him and no appointment letter is used to issue to the Casual employee.

16. Heard the argument submitted by Mr. D. Sur, Advocate for the Management and Mr. M. K. Jain, Advocate for the workman. Perused the documents relied by both the parties. I find a list of working days is submitted by the workman but to prove the same he has not called any record from the end of the Management. This document can not be accepted authentic document. However, I have found though the worked 483 days yet he has not worked 240 days in a year. As per the Scheme to be regularized he must be a Casual employee and he must work 240 days in a year. No Attendance Register is called and proved. There is no evidence of creation of posts for Grade-D employee or Casual labourer. It is not proved that the workman worked under BSNL. The Management has submitted Annexure-VI wherein as regards the time limitation is

described. I find as per this Annexure the claim of the workman due to inordinate delay became not entertainable. It is not proved by the workman that he is entitled for any Scheme of the BSNL as the relation of the workman and the Management is not in existence or proved. To acquire temporary status of Casual labour as per Annexure-III the following condition is to be fulfilled:

"3. Temporary Status

- (i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

But what I found the workman has not fulfilled this condition. Hence, he is not entitled for regularization as casual employee under the BSNL or the Management. In the result, I find the workman is not entitled for any relief and his prayer is rejected.

17. Prepare the award and send the same to the authority concerned as per procedure confidentially immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 16 जुलाई, 2007

क्र.आ. 2172.—केन्द्रीय सरकार संयुक्त हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (इ) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के ग्राम मंत्रालय की अधिसूचना संख्या फा. आ. 268 दिनांक 16-1-2007 द्वारा बैंक नोट मुद्रणालय देवास (प.प्र.) जो कि औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 22 के अन्तर्गत निर्दिष्ट किया गया है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 19-1-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है ;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (इ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दि. 19-7-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[फा. सं. एस्-11017/1/2006-आई आर (पीएल)]

गुरजोत कौर, संयुक्त सचिव

New Delhi, the 16th July, 2007

S.O. 2172.—Whereas the Central Government having been satisfied that the public interest so requires

that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No. 268 dated 16-1-2007 the service in Bank Note Press, Dewas which is covered by item 22 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 19th January, 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 19th July, 2007.

[F. No. S-11017/1/2006-IR (P1.)]

GURJOT KAUR, Jr. Secy.

नई दिल्ली, 17 जुलाई, 2007

क्र.अ. 2173.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अगस्त, 2007 को उस तारीख के रूप में निबत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त हो जा चुकी है] के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :-

"आन्ध्र प्रदेश राज्य के कदप्पा जिले में स्थित जम्मलमधुगु मण्डल के अन्तर्गत जम्मलमधुगु नगर पालिका के सीमा के अन्तर्गत सभी क्षेत्र एवं मोरगुडि रानसव गाँव।"

[सं एस-38013/19/2007-एसएस-1]

एस. डी. जेक्सियर, अवर सचिव

New Delhi, the 17th July, 2007

S.O. 2173.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :-

"All the areas falling within the Municipal limits of Jammalamadugu and Revenue Villages of Moragudi of

Jammalamadugu Mandal of Kadapa District in Andhra Pradesh."

[No. S-38013/19/2007-S.S.1]

S. D. XAVIER, Under Secy.

नई दिल्ली, 17 जुलाई, 2007

क्र.आ. 2174.—केन्द्र सरकार, राजभाषा (सेवा के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में निम्नलिखित कार्यालय को, जिनके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

| क्रम संख्या | कार्यालय का नाम |
|-------------|--|
| 1. | आंचलिक प्रशिक्षण संस्थान (उत्तरी अंचल), फरीदाबाद |
| 2. | क्षेत्रीय क्रम आयुक्त (केन्द्रीय), जयपुर |
| 3. | सहायक क्रम आयुक्त (केन्द्रीय), कोटा |
| 4. | क्रम प्रवर्तन अधिकारी (केन्द्रीय), उदयपुर |
| 5. | क्रम प्रवर्तन अधिकारी (केन्द्रीय), जोधपुर |
| 6. | क्रम प्रवर्तन अधिकारी (केन्द्रीय), बीकानेर |
| 7. | क्रम प्रवर्तन अधिकारी (केन्द्रीय), भीलवाड़ा |
| 8. | क्रम प्रवर्तन अधिकारी (केन्द्रीय), सवाईमाधोपुर |

[सं. ई-11017/1/2006-राजभाषा]

शारदा प्रसाद, संयुक्त सचिव

New Delhi, the 17th July, 2007

S.O. 2174.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union), Rules, 1976 the Central Government hereby notifies following offices, 80% Staff whereof have acquired working knowledge of Hindi :-

| Sl. No. | Name of the Office |
|---------|---|
| 1. | Zonal Training Institute (North Zone), Faridabad |
| 2. | Regional Labour Officer (Central), Jaipur |
| 3. | Assistant Labour Officer (Central), Kota |
| 4. | Labour Enforcement Officer (Central), Udaipur |
| 5. | Labour Enforcement Officer (Central), Jodhpur |
| 6. | Labour Enforcement Officer (Central), Bikaner |
| 7. | Labour Enforcement Officer (Central), Bhilwara |
| 8. | Labour Enforcement Officer (Central), Sawai Madhopur |

[No. E-11017/1/2006-RBN]

SHARDA PRASAD, Jr. Secy.

नई दिल्ली, 19 जुलाई, 2007

क्र.अ. 2175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधकों को संबन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 232/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं एल-12012/433/98-आईएमए(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 232/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/433/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Sri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 232/2004

(Principal Labour Court CGID No. 151/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Ananda Babu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Elambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar,
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/433/98-IR (B-I) dated 10-2-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 151/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 232/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Sri M. Ananda Babu, wait list No. 741 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Pallavaram branch from 14-3-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Pallavaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-3-1983, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Guindy branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.735 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 735 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of

permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claims with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularize the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour....

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 741 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashers, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M3 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (c) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/

Bank has no application in the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/

Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were

members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead

of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 YAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMHANATHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner has been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of

select list on reduction in number of vacancies was made in view of the impending absorption of stream surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creating of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied

upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANT KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HUMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of

'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further,

in C.D.J 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 3 L.J. 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot

claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | | |
|--------------------|---|---|
| For the Petitioner | : | WW1 Sri M. Ananda Babu WW2 Sri V. S. Ekambaram |
| For the Respondent | : | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 01-06-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|----------|--|--|-----------|---|
| W3 | 24-04-91 | Xerox copy of the circular of respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 01-05-91 | Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4. | W22 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W23 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. | W24 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 25-03-97 | Xerox copy of the circular of respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 09-11-99 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengersial work. | W26 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 07-04-86 | Xerox copy of the service certificate issued by Pallavaram Branch. | W27 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants. |
| W10 | 01-10-91 | Xerox copy of the service certificate issued by Guindy branch. | W28 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W11 | 16-03-95 | Xerox copy of the service certificate issued by Guindy branch. | W29 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W12 | 18-03-96 | Xerox copy of the service certificate issued by Guindy branch. | For the Respondent/Management:— | | |
| W13 | 23-09-96 | Xerox copy of the service certificate issued by Guindy branch. | Ex. No. | Date | Description |
| W14 | 03-07-89 | Xerox copy of the interview letter. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the reference book on Staff matters Vol III consolidated upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W20 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

— —

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबंध नियोजकों और उनके कार्यकर्ताओं के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचात (संदर्भ संख्या 250/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. रत्न 12012/452/98-आईकार(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2176.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 250/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/452/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 250/2004

(Principal Labour Court CGID No. 190/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. Sukumaran : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
2. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani,
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/452/98-IR (B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 190/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 250/2004.

2. The Schedule mentioned in that order is as follows:-

"Whether the demand of the workman Shri S. Sukumaran, wait list No.442 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:-

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thousand lights branch from 1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the thousand lights branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1982, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 21-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non employment. Since the conciliation ended an

failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.443 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1994 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 443 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.F.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 442 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/celane in the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come - first go' or 'first come - last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his held statement. Further, according to MW1 wait list under

Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the avement of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1991. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device

to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sestry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 JLD, SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointments against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MWT. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 4-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court at Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application in the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 U.L.J 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression "actually worked under the employer" cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

M1 But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL, A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 ILJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS, wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even

in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery

again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 *MANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS.* wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 *A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS*, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the matter under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *UNION OF INDIA AND OTHERS Vs. K.V. VJEEESH* wherein the Supreme Court has held that "the only question which falls for determination

in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of stream surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *SHANKARSAN DASH Vs. UNION OF INDIA* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *STATE OF HARYANA AND ORS. Vs. PARASINGH AND OTHERS* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door

(c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CJD 2006 SC 443 NATIONAL FERTILIZERS LTD. AND

OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SIJANTHUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 L.J.N 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDAY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment therein as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlement 11, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to regeneration of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide representation, fraud or even corruption or other

inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|---|
| For the Petitioner | WW1 Sri S. Sukumaran WW2 Sri V. S. Ekumbaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 20-08-88 | Xerox copy of the Madras L.H.O. Stare Circular No. PER/1K/18/88 regarding wait lists and projected vacancies. |
| W2 | 1-8-88 | Xerox copy of the notice to the temporary employees based on the Settlement dt. 17-11-1987 "Daily Thanthi". |

| | | | | | |
|-----|----------|---|---|----------|--|
| W3 | 24-4-91 | Xerox copy of the Madras LHO Circular No. 6 (91-92) regarding absorption of daily wagers in messenger vacancies. | W19 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan |
| W4 | 01-05-91 | Xerox copy of the Notice to the Daily wagers based on the Settlement dated 27-10-1988—"The Hindu". | W20 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi |
| W5 | 20-08-91 | Xerox copy of the Further Notice to the Daily Wagers extending the period of qualifying service of eligibility—"The Hindu". | W21 | 31-03-97 | Xerox copy of the Appointment Order to G. Pandi |
| W6 | 15-03-97 | Xerox copy of the Chennai Zonal Office letter about filling up of vacancies of sanctioned messenger posts for the years 1995 & 1996. | W22 | Feb'2005 | Xerox copy of the Pay Slip of T. Sekar for the month of February 2005 wait list No. 395. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 13-02-95 | Xerox copy of the Madurai Module Circular Letter—engaging temporary employees from the panel of wait list. |
| W8 | Nil | Xerox copy of the Casuals should not be engaged to do messengerial work—Reference Book on Staff matters (consolidated upto 31st December, 1993) | W24 | 09-11-92 | Xerox copy of the Circular No. 28 Norms for sanction of messenger staff. |
| W9 | 07-12-84 | Xerox copy of the service certificate issued by Thousand Light Branch. | W25 | 09-07-92 | Xerox copy of the Minutes of the Bipartite Meeting. |
| W10 | 14-08-96 | Xerox copy of the service certificate issued by Ayanavaram Branch. | W26 | 09-07-92 | Xerox copy of the Settlement for implementation of norms creation of part time general Attendants. |
| W11 | 12-02-96 | Xerox copy of the service certificate issued by Anna Nagar West Branch. | W27 | 07-02-06 | Xerox copy of the Conversion of part time employees and designate them as General Attendants. |
| W12 | 31-06-97 | Xerox copy of the service certificate issued by Nungambakkam Branch. | W28 | 31-12-85 | Xerox copy of the Staff circular : PER/IR/68/85—Temporary employees. |
| W13 | 03-06-97 | Xerox copy of the service certificate issued by Saidapet Branch. | For the Respondent/Management :— | | |
| W14 | Nil | Xerox copy of the Reference Book on Staff Matters consolidated upto 31-12-1984 Volume II Chapter LXVII—Temporary employees in the subordinate cadre—Guidelines. | Ex. No. | Date | Description |
| W15 | Nil | Xerox copy of the Reference Book on Staff matters consolidated upto 31-12-1993 Volume II, Chapter 39—Guidelines for appointment of temporary employees. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan. | M4 | 09-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का (14) को धारा 17 के अनुसारण से, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/अप न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 249/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं एल 12012/451/98-आईओर (बी 1) ;

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 249/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/451/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT :

Sri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 249/2004

(Principal Labour Court CGID No. 188/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. J. L. Alexander : I Party/Petitioner

AND

The Assistant General Manager, II Party/Management
State Bank of India,
Z. O. Chennai,

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. J. 12012/451/98-IR (B 1) dated 12-3-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 188/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGID cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 249/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Sri M. Dhansuraj, wait list No.461 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tambaram branch from 9-6-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen, who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From October, 1981, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in MRI branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 720 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 720 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.1872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 737 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No.1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25P applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause No Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was

not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at

the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastri Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 I.D. SINGH Vs RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 to W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5.

Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes past reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 I.LJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the

provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 2 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has

limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the reattachment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 164 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner has been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he

should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIRESH where in the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is

available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these

circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "It is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegality and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 *National Fertilisers Ltd. and Others Vs. Somvir Singh*, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 *Municipal Council, Soganpur Vs. Surinder Kumar*, the Supreme Court has held that "It is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme contained under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 *Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey* wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement

and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|--|
| For the Petitioner | WW1 Sri J. L. Alexander WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :-

| Ex. No. | Date | Description |
|---------|--------|--|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1. |

| | | | | | |
|-----|----------|--|--------------|-------------|---|
| W2 | 20-4-88 | Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1. | W19 | 26-3-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W20 | 31-3-97 | Xerox copy of the appointment order to Sri G. Pandi |
| W4 | 1-5-91 | Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4. | W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W22 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. | W23 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W24 | 09-07-92 | Xerox copy of the minutes of the Byparite meeting. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W25 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants. |
| W9 | 10-12-84 | Xerox copy of the service certificate issued by Mannadi Branch. | W26 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W10 | 5-8-88 | Xerox copy of the service certificate issued by Mannadi branch. | W27 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre For the Respondent/Management : -- |
| W11 | 8-8-88 | Xerox copy of the service certificate issued by Perambur branch. | Ex. No. Date | Description | |
| W12 | Nil | Xerox copy of the statement showing number of Days the Petitioner worked. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W14 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 | M3 | 27-10-88 | Xerox copy of the settlement. |
| W15 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M4 | 09-01-91 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj | M5 | 30-07-96 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W18 | 17-3-97 | Xerox copy of the Service particulars—J. Velmurugan | M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2178.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रशासक के संघर्ष नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 248/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/447/98-आईआर की 1]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 248/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. E. 12012/447/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT:

Sri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 248/2004

(Principal Labour Court CGID No. 187/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sr. M. Dhanusuraj : I Party/Petitioner

AND

The Assistant General Manager : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE:

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder,
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/447/98-IR (B-1) dated 12-3-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 187/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 248/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Dhanusuraj, wait list No. 461 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows.

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tambaram branch from 9-6-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tambaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 9-6-84, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tambaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31.3.1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 461 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 461 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are:

- (i) "Whether the demand of the Petitioner in Wait List No. 461 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA V. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, fanishes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. These casuals were given more beneficial treatment in the manner of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wagers in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the creditability attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (nn) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 **H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS** wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days in which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 **WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION** wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(2) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a

representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AJR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for removing the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 369 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VUEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in

an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala-fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LJI (Supp) 754 wherein the

Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDI 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in C.D.J. 2006 SC 395 MUNICIPAL COUNCIL, SIJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 21 J.N. 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary

employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri M. Dhansuraj
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1. |
| W2 | 23-04-88 | Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |

| | | |
|-----|----------|---|
| W4 | 01-05-91 | Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. |
| W7 | 25-02-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 09-03-87 | Xerox copy of the service certificate issued by Tambaram Branch. |
| W10 | Nil | Xerox copy of the service certificate issued by Tambaram branch. |
| W11 | 27-05-88 | Xerox copy of the service certificate issued by Tambaram Airforce station branch. |
| W12 | 20-08-92 | Xerox copy of the service certificate issued by Tambaram AFS branch. |
| W13 | 04-01-94 | Xerox copy of the service certificate issued by Guindy Branch. |
| W14 | 01-01-95 | Xerox copy of the service certificate issued by Meenambakkam Branch. |
| W15 | 30-12-96 | Xerox copy of the service certificate issued by Meenambakkam Branch. |
| W16 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W17 | Nil | Xerox copy of the reference book on Staff matters Vol. III consolidated upto 31-12-95. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post-K. Subburaj. |
| W20 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post-J. Velmurugan. |
| W21 | 17-03-97 | Xerox copy of the service particulars J. Velmurugan. |

| | | |
|-----|-----------|---|
| W22 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial -G. Pandi. |
| W23 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W24 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W25 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W26 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W27 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W28 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants. |
| W29 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W30 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :—

| Sl. No. | Date | Description |
|---------|----------|--|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

क्र.अ. 2179.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संवाद नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्री न्यायालय, चेन्नई के पंचद (संदर्भ संख्या 231/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं एल-12012/434/98-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2179. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 231/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/434/98-TR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 231/2004

(Principal Labour Court CGID No. 150/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri G. Murugan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai

APPEARANCES

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/434/98-TR (B-1) dated 10-2-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 150/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 231/2004.

2. The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri G. Murugan, wait list No. 557 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Pallavaram branch from 1-9-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Pallavaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1-9-1983, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Service branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastri Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 553 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 35 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 553 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1971 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are:

- (a) "Whether the demand of the Petitioner in Wait List No. 557 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (b) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald

statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave

vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'casuals' or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also void in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in contravention and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or joining within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, *malafide* and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it contravenes past reference period and hence evidence

of Respondent/Bank has no application in the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 75 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 3 ILL 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen, but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/sapping of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(3) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 2 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VUFRSH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all these ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme

Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of prescribed period of probation would not arise." Further, in CJD 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself, would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of malafide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P. A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri G. Murgan
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description |
|---------|---------|---|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|----------|---|----------------------------------|-----------|---|
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W22 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W23 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W24 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference Book on staff about casuals not to be engaged at office/branches to do messengerial work. | W26 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 11-04-92 | Xerox copy of the service certificate issued by Chamiers Branch. | W27 | 09/07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W10 | 2-06-88 | Xerox copy of the service certificate issued by Pallavaram branch. | W28 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W11 | 27-08-88 | Xerox copy of the service certificate issued by Pallavaram branch. | W29 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W12 | 17-12-80 | Xerox copy of the service certificate issued by Triplicane Branch. | For the Respondent/Management :— | | |
| W13 | 23-04-97 | Xerox copy of the service certificate issued by service branch | Ex.No. | Date | Description |
| W14 | 03-07-89 | Xerox copy of the interview letter. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the Reference Book on Staff matters Vol. III consolidated upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W20 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99. |

नई दिल्ली, 19 जुलाई, 2007

क्र.अ. 2180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध निवासियों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 247/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्रणत हुआ था।

[सं. एल-12012/489/98-आईआर(बी 1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 247/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/489/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 247/2004

(Principal Labour Court CGID No. 174/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Manickam : I Party/Petitioner

AND

The Assistant General Manager : II Party/Management
State Bank of India
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/489/98-IR (B-1) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 174/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as ID No. 247/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Sri P. Manickam, waitlist No. 446 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Triplicane branch from 22-05-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 512/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed form through Branch Manager of the Triplicane branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 22-05-1980, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to

his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastri Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation, which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said

settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 446 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 446 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary

employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 446 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 5421 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MC. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under

Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device

to take them out of the principal clause 2 (cc) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 4 I.L.J. 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life mainstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 19(3) of the I.D. Act, in line of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation was bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3), the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 R.C.F. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even coercion and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 343 SECRETARY, KOLLAM MILA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only an duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1991 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VHEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the "decision" reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 L.J (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADEYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|--|
| For the Petitioner | WW1 Sri P. Manickam WW2 Sri V. S. Ekanbarum |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :-

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|----------|---|--|-----------|--|
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagors in Messenger vacancies. | W20 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4. | W21 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—C. Pandi |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagors. | W22 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up to vacancies of messenger posts. | W23 | Feb. 2005 | Xerox copy of pay the slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W24 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Lingaging temporary employees from the panel of wait list |
| W8 | Nil | Xerox copy of the instruction in Reference book no staff about casuals not to be engaged at office/branches to do messenger's work. | W25 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff |
| W9 | 21-06-83 | Xerox copy of the service certificate issued by Triplicate Branch. | W26 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W10 | 23-01-92 | Xerox copy of the service certificate issued by Nangunabakham branch. | W27 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W11 | 18-02-92 | Xerox copy of the service certificate issued by Chintadripet branch. | W28 | 07-02-95 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W12 | 10-01-98 | Xerox copy of the service certificate issued by Town Branch. | W29 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre |
| W13 | 25-01-05 | Xerox copy of the letter from Petitioner for service Service being issued to Deputy General Manager, State Bank of India, Chennai, | For the Respondent/Management:— | | |
| W14 | Nil | Xerox copy of the acknowledgement card and Postal receipt. | Ex. No. | Date | Description |
| W15 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M3 | 27-10-88 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj | M4 | 09-01-91 | Xerox copy of the settlement. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of application proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध निवासियों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अमान्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 237/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/440/98-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 237/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/440/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 237/2004

(Principal Labour Court CGID No. 164/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Raju : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani,
Advocates.

AWARD

1. The Central Government, Ministry of Labour vide Order No. L-12012/440/98-IR (B-I) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 164/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 237/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Raju, wait list No. 659 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Perambur branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Perambur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Thousandlights branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3)

of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 659 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 659 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/

casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in M.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are:

- (i) "Whether the demand of the Petitioner in Wait List No. 659 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners

in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M.I. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the

I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in

its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wage in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 I.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badli' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MWT. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, *malafide* and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months

as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II I.J 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not *bonafide* and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair

in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to the being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference; subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he

argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIERSH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, putting of

select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. HARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange, nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from

giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SBC I ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYAKTHI & ORS Vs. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLI (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of

the LD. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory. on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILISERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of

confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CJI 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules is also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 140 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. In view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioners.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not bona fide in nature or it has been arrived at on account of mala fide/misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the

Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri K. Raju
WW2 Sri V. S. Iyankaram

For the Respondent MW1 Sri C. Manappan
MW2 Sri C. Ramalingam

Documents Marked:—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1 |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |

| | | | | | |
|-----|----------|--|---|------------|--|
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily Wagers based on Ex. W4. | W23 | 26-03-97 | Xerox copy of letter advising selection of part time Menial—G. Pandi |
| W5 | 20-06-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers | W24 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up to vacancies of messenger posts. | W25 | 1Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W26 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W27 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff |
| W9 | 30-11-94 | Xerox copy of the service certificate issued by Perambur Branch. | W28 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W10 | Nil | Xerox copy of the service certificate issued by Elephant Gate Branch. | W29 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W11 | 02-12-95 | Xerox copy of the service certificate issued by Thousand Lights Branch. | W30 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W12 | 09-01-96 | Xerox copy of the service certificate issued by Washermenpet Branch. | W31 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre |
| W13 | 13-03-96 | Xerox copy of the service certificate issued by Elephant Gate Branch. | For the Respondent/Management :— | | |
| W14 | 13-03-96 | Xerox copy of the service certificate issued by Elephant Gate Branch. | Ex. No. | Date | Description |
| W15 | 28-05-97 | Xerox copy of the service certificate issued by Thousandlights Branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | 21-06-97 | Xerox copy of the service certificate issued by Mint Terminus Branch. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W17 | Nil | Xerox copy of the administrative guidelines in Reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W18 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 | M4 | 09-01-91 | Xerox copy of the settlement. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M5 | 30-07-96 | Xerox copy of the settlement. |
| W20 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj | M6 | 09-06-96 | Xerox copy of the minutes of conciliation proceedings. |
| W21 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91 |
| W22 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संवद्ध निसेजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 239/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था

[सं. एन 12012/468/98-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 239/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/468/98 IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 239/2004

(Principal Labour Court CGID No. 166/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Thomas : I Party/Petitioner

AND

The Assistant General Manager, : II Party/
State Bank of India, : Management
Z. C. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Elamharam,
Authorised Representative

For the Management : M/s. Veeramani, Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/468/98-IR (B-1) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 166/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 239/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Thomas, wait list No. 407 for resourcing the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mannadi branch from 16-6-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-6-80, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Chindadripet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for

adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastri Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-96. The said settlements became subject matter of conciliation

proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 407 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 407 he was not appointed. The said settlements were *bonafide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for

appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1995, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 407 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners

in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the reengagement as unjust and illegal and they further prayed for reinstatement with back wages and other amendatory benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAL & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies

but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, those persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages

as per Bipartite Settlement while the 1988 settlement dealt with daily wage in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (ou) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH

Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'oddies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of consultation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as envisioned under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the

benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 III L.J.539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/drawing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(2) of the ID Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and

is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 308 K.C.P. LTD. Vs. PRISHING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the

settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the

pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN V. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would preclude the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner has been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1946 3 SCC 139 UNION OF INDIA AND OTHERS V. K.V. VUJESSH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the

persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 5 SCC 584 SYNDICATE BANK & ORS. V. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the Respondents as contained in the A.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 40 SHAN KARSAN DASH V. UNION OF INDIA wherein the Supreme Court has held that "candidates included in a merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 1 AS IC 2168 STATE OF HARYANA AND ORS. V. PRAKASH SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. There are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the

other. Just because in one case, a direction was given to regularise employees who have put in one-year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the

Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right.* Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to make out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment

made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 I.T.N 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S. C. PANDIY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed heretofore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined: —

For the Petitioner: WW1 Sri D. Thomas
WW2 Sri V. S. Ekamsharan
For the Respondent: MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked: —

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1 |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches |

| | | | | | |
|-----|----------|--|---|-----------|--|
| | | regarding identification of messenger vacancies and filling them before 31-3-97. | W27 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W8 | Nil | Xerox copy of the instruction in reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W28 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—O. Pandi. |
| W9 | 31-10-80 | Xerox copy of the service certificate issued by Mannady Branch. | W29 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W10 | 25-04-83 | Xerox copy of the service certificate given by Park Town Branch of Respondent/Bank. | W30 | Feb. 2005 | Xerox copy of the pay slip of T. Selvar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W11 | 21-11-83 | Xerox copy of the service certificate issued by Mannadi branch. | W31 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W12 | 13-07-89 | Xerox copy of the service certificate issued by Chintadripet branch. | W32 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W13 | 25-07-95 | Xerox copy of the service certificate issued by Thousand Lights branch. | W33 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W14 | 30-12-95 | Xerox copy of the service certificate issued by Thousand Lights branch. | W34 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation, for implementation of bonus-creation of part time general attendants. |
| W15 | 25-01-96 | Xerox copy of the service certificate issued by Mint Terminus branch. | W35 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W16 | 25-01-96 | Xerox copy of the service certificate issued by Mint Terminus branch. | W36 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W17 | 25-01-96 | Xerox copy of the service certificate issued by Mint Terminus branch. | For the Respondent/Management :— | | |
| W18 | 25-01-96 | Xerox copy of the service certificate issued by Mint Terminus branch. | Ex. No. | Date | Description |
| W19 | 25-01-96 | Xerox copy of the service certificate issued by Mint Terminus branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W20 | 08-01-97 | Xerox copy of the service certificate issued by Thousand Lights branch. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W21 | 11-11-97 | Xerox copy of the service certificate issued by Thousand Lights branch. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W22 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W23 | Nil | Xerox copy of the reference book on staff matters Vol. III consolidated upto 31-12-95. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W24 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W25 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj. | M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| W26 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan. | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया की प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 238/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/467/98-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 238/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/467/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 238/2004

(Principal Labour Court CGID No. 165/99)

In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri J. Thomas : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Z. O. Chennai. : II Party/
Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised
Representative.

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/467/98-IR (B-I) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said labour Court has taken

the dispute on its file as CGID No. 165/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 238/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri J. Thomas, wait list No. 478 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Nungambakkam branch from 1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and other became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent Bank in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B, and C. Though the classification was unreasonable, the Respondent Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Nungambakkam branch. He was called for an interview by a Committee appointed by Respondent Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as class IV employee. From 1986, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Chindadripet branch, another advertisement by the Respondent Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence,

the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularize him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Salary Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious blemishes and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 478 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary who employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off the date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 478 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of

permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment to the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in this favour.

7. In these circumstances, the points for my consideration are—

(a) "Whether the demand of the Petitioner in Wait List No. 478 for restoring the wait list of temporary messenger in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(b) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex.MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularization of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S.

SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex.M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex.M1 deals with categorization of retrenched temporary employees into 'A, B, and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come first go' or 'first come last go' and therefore, this categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc, for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement

with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywide settlement it is not so to in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casual as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex.M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex.M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(ii) of the I.D. Act, 1947. Though the Petitioner's

work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorization as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workman is illegal". Learned representative further contended that Ex.M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex.M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the avement of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M8 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240

days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 ILLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/dropping of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorized. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have conceded the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank

was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESTIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting

workman were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VUEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination

acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNHCATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 49 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-5-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his

appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts: "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HUMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on

the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of

appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 L.N. 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to resume the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this

stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri J. Thomas
 WW2 Sri V. S. Ekambaram
 For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :-

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01.8.88 | Xerox copy of the paper publication in daily Thanthi based on Ex.M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex.M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |

| | | | | | |
|-----|----------|--|---|-----------|---|
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on fix. W4 | W22 | 26-03-97 | Xerox copy of the letter advising selection of part time Mensial—G. Pandi |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W23 | 31-03-97 | Xerox copy of the appointment order to Sri. G. Pandi. |
| W6 | 15-03-97 | Xerox copy of the Circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts | W24 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W7 | 25-02-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list |
| W8 | Nil | Xerox copy of the instruction in Reference Book on staff about casuals not to be engaged at office/branches to do messengerial work | W26 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W9 | Nil | Xerox copy of the service certificate issued by Nungambakkam Branch. | W27 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W10 | 21-05-94 | Xerox copy of the service certificate issued by Nungambakkam Branch. | W28 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W11 | 10-06-94 | Xerox copy of the service certificate issued by Royapettah Branch. | W29 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W12 | 07-02-95 | Xerox copy of the service certificate issued by Elephant Gate Branch. | W30 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W13 | 14-11-95 | Xerox copy of the service certificate issued by Nungambakkam Branch. | For the Respondent/Management :— | | |
| W14 | 10-06-97 | Xerox copy of the service certificate issued by Nungambakkam Branch. | Ex. No. | Date | Description |
| W15 | 12-06-97 | Xerox copy of the service certificate issued by Chintadripet Branch | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W17 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 | M3 | 27-10-88 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Muralikarman | M4 | 09-01-91 | Xerox copy of the settlement. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj | M5 | 30-07-96 | Xerox copy of the settlement. |
| W20 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W21 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 20 जुलाई, 2007

क्र.आ. 2184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधकों के संबद्ध विवादकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के पंजाब (संदर्भ संख्या 227/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/429/98-आईएम(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 227/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No. L-12012/429/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Sri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 227/2004

(Principal Labour Court CGID No. 126/99)

(In the matter of the dispute for adjudication under clause(d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Ashok Kumar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/429/98-IR (B-1) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 126/99 and issued notices to both parties. Both sides entered appearance and filed

their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 227/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Sri M. Ashok Kumar, wait list No. 468 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periamet branch from 19-3-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Periamet branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 13-3-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in HVF Avadi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for

adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Santry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 466 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 466 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conversion of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary

employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 458 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. These casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. These candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald

statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wagers in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by cumbing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M1 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that

that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Salary Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post

reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25P of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LJI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 11 LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it

will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS' UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor

workman to hardship involved in moving the machinery again". It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits". Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner". He also argued that in Express Newspapers (P) Ltd.'s case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court". Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VUJRESH wherein the Supreme Court

has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy". In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory". He further relied on the rulings reported in 1997 6 SCC 594 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively". He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those adhoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every adhoc temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he

appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 1 SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The

concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right in the posts, their disengagement is not arbitrary". He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory. on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain — not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due

process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUANPUR Vs. SUBINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellants for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional schemes enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioners.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona

fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW1 Sri M. Ashok Kumar
WW2 Sri V. S. Elanabaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|----------|---|---|-----------|---|
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wages in messenger vacancies. | W19 | 31-03-97 | Xerox copy of the appointment order to Shri—G.Pandi. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu daily wages based on Ex. W4. | W20 | Feb. 2005 | Xerox copy of the Pay Slip of T. Sekar for the month of February 2005 wait list No. 395 of Madurai Circle. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wages. | W21 | 13-03-95 | Xerox copy of the Madurai Module Circular Letter about Engaging temporary employees from the panel of wait list. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W22 | 9-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 9-7-92 | Xerox copy of the minutes of the Biparte meeting. |
| W8 | Nil | Xerox copy of the instructions in Reference Book on Staff about casuals not to be engaged in office/branches to do messengership work. | W24 | 09-7-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W9 | 17-08-88 | Xerox copy of the service certificate issued by Perambur Branch. | W25 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as General Attendants. |
| W10 | 05-01-98 | Xerox copy of the service certificate issued by Chetpet Branch. | W26 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W11 | 12-01-98 | Xerox copy of the service certificate issued by Chintadripet Branch. | For the Respondent/Management :— | | |
| W12 | Nil | Xerox copy of the administrative guidelines in Reference Book on Staff Matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | Ex. No. | Date | Description |
| W13 | Nil | Xerox copy of the Reference Book on Staff Matters Vol. III consolidated upto 31-12-95. | M1 | 17-1-87 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Maralikkannan. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subbaraj. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W17 | 17-03-97 | Xerox copy of the service particulars —J. Velmurugan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W18 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G.Pandi. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-06-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 20 जुलाई, 2007

क्र.सं. 2185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया को प्रबंधन के संबद्ध निवेशकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई को संघट (संदर्भ संख्या 226/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/435/98-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 226/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No. L-12012/435/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Sri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 226/2004

[Principal Labour Court CGID No. 125/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. Chendralvarayan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Elambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocate

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/435/98-IR (B-1) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 125/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the Constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 226/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Sri R. Chendralvarayan, wait list No. 375 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mint Terminus branch from 2-2-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985 86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mint Terminus branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 2-2-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Ayanavaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sasary Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 375 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 375 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents authenticity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 375 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 240 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashas, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not isconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees,

the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(c) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service latter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M3 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended

application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the concerned workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 509 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VJESHS wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad hoc* temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for

applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 Sec 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to

such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 L.J (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further,

in **CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh**, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in **CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar**, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in **2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey** wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement for the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

| | |
|--------------------|--|
| For the Petitioner | WW1 Sri R. Chengalvarayan WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Kamalingam |

Documents Marked:—

| Ex. No | Date | Description |
|--------|---------|---|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1. |
| W2 | 30-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|---------|---|--|-----------|---|
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 26-3-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 1-5-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W22 | 31-3-97 | Xerox copy of the of the appointment order to Sri G. Pandi. |
| W5 | 20-8-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W23 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W24 | 13-2-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 9-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W26 | 9-7-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 22-3-84 | Xerox copy of the service certificate issued by Mint Terminus Branch. | W27 | 9-7-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants. |
| W10 | 18-7-95 | Xerox copy of the service certificate issued by Mint Terminus Branch. | W28 | 7-2-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W11 | 23-5-96 | Xerox copy of the service certificate issued by Ayanavaram Branch. | W29 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W12 | 14-3-97 | Xerox copy of the service certificate issued by Thousand Lights Branch. | For the Respondent/Management :-- | | |
| W13 | 16-4-97 | Xerox copy of the service certificate issued by Mint Terminus Branch. | Ex. No. | Date | Description |
| W14 | 16-4-97 | Xerox copy of the service certificate issued by Ayanavaram Branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to Subordinate Cadre and Service Conditions. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the Reference Book on Staff matters Vol. III consolidated upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Maraikannan. | M4 | 9-1-91 | Xerox copy of the settlement. |
| W18 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M5 | 30-7-96 | Xerox copy of the settlement. |
| W19 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M6 | 9-6-95 | Xerox copy of the minutes of conciliation proceedings. |
| W20 | 17-3-97 | Xerox copy of the Service particulars—J. Velmurugan. | M7 | 28-5-91 | Xerox copy of the order in W.P. No.7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in P. O. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3062/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 & 16290/99 in W.A. No. 1898/99. |

नई दिल्ली, 20 जुलाई, 2007

क्र.अ. 2186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/अथ न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 225/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/428/98-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 225/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No. L-12012/428/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 225/2004

(Principal Labour Court CGJD No. 124/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Elumalai : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorized Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government, Ministry of Labour vide Order No. L-12012/428/98-IR (B-1) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGJD No. 124/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 225/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Elumalai, wait list No.465 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mannadi branch from August, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 54287 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From August, 1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kothur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the

matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522 (4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.465 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 465 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against

the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labourers. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 465 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated, Learned representative for the Petitioner

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M 1, M 3 and M 4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M 3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (no) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document showing how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no

application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workmen with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM HILL HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner has been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VDEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefensible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mau fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mau fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc* temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWAN KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLI (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore,

is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in *CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar*, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules is also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in *2006 2 JLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey* wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor he has been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and

since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not invited to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri M. Ezhumalai
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam.

Documents Marked:—

| Ex. No. | Date | Description |
|---------|---------|--|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |

| | | | | | |
|-----|----------|---|---|----------|---|
| W4 | 1-5-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W25 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J.Velmurugan. |
| W5 | 20-8-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W26 | 17-03-97 | Xerox copy of the service particulars—J.Velmurugan. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W27 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G.Pandi |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W28 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at Office/Branches to do messengerial work. | W29 | Feb.2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W9 | 16-9-87 | Xerox copy of the service certificate issued by Mannadi Branch. | W30 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W10 | 1-8-88 | Xerox copy of the service certificate issued by Mannadi branch. | W31 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W11 | 30-9-93 | Xerox copy of the service certificate issued by Elephant Gate branch. | W32 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W12 | 19-10-94 | Xerox copy of the service certificate issued by Elephant Gate branch. | W33 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W13 | 3-10-94 | Xerox copy of the service certificate issued by HVF Avadi branch. | W34 | 07-02-06 | Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W14 | 13-09-96 | Xerox copy of the service certificate issued by Avadi branch. | W35 | 31-12-85 | Xerox copy of the Local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W15 | 22-01-96 | Xerox copy of the service certificate issued by Elephant Gate branch. | For the Respondent/Management :— | | |
| W16 | 15-03-96 | Xerox copy of the service certificate issued by Nungambakkam branch. | Ex.No. | Date | Description |
| W17 | 10-03-97 | Xerox copy of the service certificate issued by LHO Chennai branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W18 | 11-03-97 | Xerox copy of the service certificate issued by Thousand lights branch. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W19 | 17-06-97 | Xerox copy of the service certificate issued by Elephant Gate branch. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W20 | 15-07-97 | Xerox copy of the service certificate issued by Kottur branch. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W21 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W22 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W23 | 6-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V.Muralikannan. | M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| W24 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 20 जुलाई, 2007

का.अ. 2187.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संघर्ष नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 230/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/436/98-आई आर(बी I);

अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 230/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007,

[No. L-12012/436/98-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 230/2004

(Principal Labour Court CGID No. 149/99)

(In the matter of the dispute for adjudication under clause (j) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri E. Ashokan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K.S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/436/98-IR (B-I) dated 10-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 149/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 230/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri E. Ashokan, wait list No. 374 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows.

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ambattur branch from 20-9-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(B) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Ambattur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 20-9-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis at MRL Masali branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 52(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 374 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 374 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are:

- (i) "Whether the demand of the Petitioner in Wait List No. 374 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioner who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, those persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the

settlements, he deposed that settlement dated 27-10-88 was not included in the Madras Circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wagers in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywide settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M1 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (no) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries' and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition

of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 111 J 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "In the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 111 J 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 111 J 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two

categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM HILL HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the

Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 104 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd's case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VILESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *malafide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *malafide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those adhoc temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave

vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegality and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent thereby on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bonafide in nature or it has been arrived at on account of malafide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|-------------------------|
| For the Petitioner | : WW1 Sri R. Ashokan |
| | WW2 Sri V. S. Elambaram |
| For the Respondent | : MW1 Sri C. Mariappan |
| | MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex.No. | Date | Description |
|--------|----------|---|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 1-5-91 | Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengers work. |
| W9 | 4-1-88 | Xerox copy of the service certificate issued by Ambattur Branch. |
| W10 | 9-6-88 | Xerox copy of the service certificate issued by Ambattur branch. |
| W11 | 10-6-88 | Xerox copy of the service certificate issued by SIDCO Industrial Estate Branch. |
| W12 | 10-4-97 | Xerox copy of the service certificate issued by MRL Branch. |
| W13 | 9-6-97 | Xerox copy of the service certificate issued by Avadi Branch. |
| W14 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. |
| W15 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. |
| W16 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikrishnan. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj |

| | | |
|-----|-----------|---|
| W18 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—I. Velmurugan. |
| W19 | 17-3-97 | Xerox copy of the service particulars—I. Velmurugan. |
| W20 | 26-3-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W21 | 31-3-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W22 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W23 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list |
| W24 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W25 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W26 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W27 | 07-02-06 | Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W28 | 31-12-85 | Xerox copy of the Local Head Office circular about appointment of temporary employees in subordinate cadre |

For the Respondent/Management :—

| Ex.No. | Date | Description |
|--------|----------|--|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-06-91 | Xerox copy of the order in W.P. No.7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 23 जुलाई, 2007

क्र.आ. 2188.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अगस्त, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध पञ्चाश के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्,

“नगर निगम लुधियाना की सीमाओं के अन्तर्गत आने वाले सभी क्षेत्र सिवाय उनके जिन पर कर्मचारी राज्य बीमा योजना पहले से लागू है।”

[सं. एस-38013/20/07-एस.एस.-1]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 23rd July, 2007

S.O. 2188.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act, shall come into force in the following areas in the State of Punjab namely:—

“Areas within the limits of Municipal Corporation Ludhiana except the areas already notified under ESI Scheme.”

[No. S-38013/20/2007-S. S. I]

S. D. XAVIER, Under Secy.

नई दिल्ली, 23 जुलाई, 2007

क्र.आ. 2189.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अगस्त, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त हो चुकी है] के उपबन्ध पञ्चाश के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्, :-

“जिला-सिन्धु, सहस्रौल पिम्बलगाड़ा के राजस्व ग्रामों पिम्बलगाड़ा [पहले से ही कर्मचारी राज्य बीमा अधिनियम 1948 की धारा-1 (3) के तहत कार्यान्वित क्षेत्र को छोड़कर] झालोली, बीलर, अजारी, कांदल, चौरवाड़ा, पगडाई, सिवेरा, मूरी, इन्द्रा, केसवपादर, राजपुरा, केशवगंज, अमली, सदलवा, ठान्डीवेरी, मालप, वरली, कुण्डाल, कालुम्बरी, साबेला, धंगा, वागदरी, नवावसर, गडिया, कांजरा, जगपुर, झंकर, जकौली, जगजाना की अन्तर्गत आने वाले क्षेत्र।”

[सं. एस-38013/21/07-एस.एस.-1]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 23rd July, 2007

S.O. 2189.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government

hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Rajasthan namely:—

“The areas comprising the revenue villages of Pindwara [Excluding the areas already implemented U/s 1(3) of the ESI Act, 1948], Bhadoli, Beelar, Ajari, Kantal, Veerwara, Parlaj, Sivera, Moori, Undra, Kertapadar, Rajpura, Keshawganj, Amali, Sadalwa, Thandiveri, Malap, Varali, Kundal, Kalumbhari, Sabela, Dhanga, Vagadari, Nawawas, Gadiya, Kojara, Janapur, Jhankar, Chawarli, Arasana in Tehsil Pindwara, District Sirohi.”

[No. S-38013/21/2007-S. S. I]

S. D. XAVIER, Under Secy.

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोक्ताओं और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 132/2004) को प्रदर्शित करती है, जो केन्द्रीय सरकार को 19-7-07 को प्राप्त हुआ था।

[सं. एल-12012/424/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/424/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 132/2004

[Principal Labour Court CGID No. 136/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

C. Rajendran (deceased) : I Party/Petitioner

ANDThe Assistant General Manager, : II Party/Management
State Bank of India,
Region-I, Trichy.**APPEARANCE**For the Petitioner : Sri V. S. Elamparam,
Authorised RepresentativeFor the Management : M/s. K. S. Sunder,
Advocates**AWARD**

1. The Central Government Ministry of Labour, vide Order No. L-12012/424/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 130/99 and issued notices to both parties. But the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 132/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri C. Rajendran, wait list No. 630 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis in Palayamkottai branch from 1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen

under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Palayamkottai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1980, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Palayamkottai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 630 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave

vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turnaround and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 630 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(i) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 630 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 & 2 :—

8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner died and it is posted for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment thereon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LR's of the Petitioner have no personal right to claim employment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, I find the claim is abused and thus, it is dismissed but without any costs.

10. Thus the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

करआ. 2191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधकों के संबंध निषेधकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई के बचाव (संख्या 2/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/293/98-आर्मास(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/293/98-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 2/2004

[Principal Labour Court CGID No. 3/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Shri K. Ganesan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Zonal Office
Coimbatore.

APPEARANCES

For the Petitioner : Sri V. S. Eshwaran,
Authorized Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/293/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 3/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 2/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Ganesan, wait list No. 502 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Melapalayam branch from 23-09-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were debarred employment after 1985-86 were classified in the settlement was under consideration once again and they classified

the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Melapalayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 23-09-1981, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Melapalayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant

relief of regular employment in Respondent/Bank with all attendant benefits

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 501 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The

Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 501 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements at bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner conceded that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank IV category, deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily

filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are —

- (i) "Whether the demand of the Petitioner in Wait List No. 502 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set aside.

9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1981 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the I.D. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner are not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected, and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क.सं. 2192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 281/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/628/98-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 281/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/628/98-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 281/2004

[Principal Labour Court CGID No. 294/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Shri P. S. Mohanasundaram : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : None

For the Management : None

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/628/98-IR (B-1) dated 3-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 294/99 and issued notices to both parties.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. S. Mohanasundaram, wait list No.361 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. Though several notices were issued, no Claim Statement was filed on behalf of the Petitioner either before the Principal Labour Court or before this Tribunal and there is no representation on his behalf. Hence, the Petitioner was called absent and set ex-parte. Further, no memo of objection was filed on the side of Respondent, in spite of adjourning the case for several hearings. Hence, the II Party/Management was also called absent and set ex-parte.

4. In these circumstances, the points for my consideration are:

(i) "Whether the demand of the Petitioner in Wait List No. 361 for restoring the wait list of temporary messengers in the Respondent Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 and 2 :—

5. As I have already stated in spite of several notices, Petitioner has not appeared before this Court nor filed Claim Statement and the II Party/Management also has not filed any memo of objection. Therefore, both parties are called absent and set ex-parte. In view of the above, I find both parties are not interested in pursuing this dispute. Hence, I find the Petitioner is not entitled to any relief. No Costs.

6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क.सं. 2193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 21/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/274/98-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2004) of the Central Government Industrial Tribunal-cum-

Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/274/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 21/2004

[Principal Labour Court CGID No. 69/99]

(In the matter of the dispute for adjudication under clause (a) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Chandran : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K.S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/274/98-IR (B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 69/99 and issued notices to both parties. Even though both sides entered appearance the I Party has not filed Claim Statement and he has not appeared before the Principal Labour Court. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 21/2004 and issued notices to both parties. In spite of adjourning the case for several hearings, the Petitioner has not filed Claim Statement. Hence, the Petitioner was called absent and set ex-parte.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Chandran, wait list No.294 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is

justified? If so, to what relief the said workman is entitled?"

3. On behalf of the Respondent memo of objection/Counter Statement was filed, wherein it is alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.294 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, Band C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was

extended up to 31-3-1997 for filling up vacancies which were to arise up to 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 294 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

4. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 294 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

5. When the matter was taken up for enquiry, it is reported by the special representative of the Petitioner that he has no instruction from the Petitioner and he is not appearing for the Petitioner and hence, the Petitioner was called absent and set aside. Since the Petitioner neither appeared before this Court nor filed the Claim Statement to substantiate his claim, I find the Petitioner is not interested in pursuing this dispute and hence, he is not entitled to any relief. No costs.

6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधकों के संबंध निवासियों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/क्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 220/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/346/98-आईडार (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 220/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure to the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/346/98-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT :

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 220/2004

[Principal Labour Court CGID No. 58/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 14 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Venu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India.
Z. O. Chennai.

APPEARANCE:

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative
For the Management : M/s. K.S. Sundar,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/346/98-IR(B-I) dated 3-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 58/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the

said dispute has been transferred to this tribunal for adjudication and this tribunal has numbered it as LD. No. 220/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Sri K. Velu, wait list No. 745 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Vandavasi branch from 01-01-1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, Band C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Vandavasi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-01-1985, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Alatur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to him non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/

Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Santry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/ absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 739 in waitlist of

Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary Messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was in-lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 739 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary

employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are—

- (i) "Whether the demand of the Petitioner in Wait List No. 745 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Print No.1: -

8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and hence, the Petitioner was called absent and set aside.

9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1985 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the LD. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner were not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.अ. 2195.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोक्ताओं और उनके कार्यकर्ताओं के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई के पंचवट (संदर्भ संख्या 168/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं एल-12012/27/99-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 168/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/27/99-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 168/2004

[Principal Labour Court CGID No. 255/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. Rangaraju : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Elamharam,
Authorised Representative

For the Management : M/s. K.S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/27/99-IR (B-I) dated 10-05-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 255/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 168/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri S. Rangaraju, wait list No. 419 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified,? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tirumayam branch from 06-08-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were in their employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C.

Though the Classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tirunayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-8-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tirunayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair laborer practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 419 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary Messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent

vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 with listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 419, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that, the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated

all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are.

(i) "Whether the demand of the Petitioner in Wait List No. 419 for restoring the wait list of temporary messengers in the 'Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:—

8. When the matter was taken up for enquiry, the Petitioner appeared and deposed his Chief Examination and when it was posted for cross examination of the Petitioner, he has not appeared for the same, even though the case was adjourned to so many hearings. It is reported by the representative for the Petitioner that he has no instruction from the Petitioner. Hence, the 1 Party/Petitioner was called absent and set aside.

9. In this case, though the Petitioner alleged that he was appointed by Respondent/Bank during the year 1982 and he was terminated during the year 1986-87 and again he was engaged as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the LD. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner was not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner . . . None

For the Respondent . . . MW1 Sri C. Mariappan
MW2 Sri T. L. Selvaraj

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1 |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies |
| W4 | 01-05-91 | Xerox copy of the advertisement in <i>The Hindu</i> on daily Wages based on Ex. W4 |
| W5 | 20-08-91 | Xerox copy of the advertisement in <i>The Hindu</i> extending Period of qualifying service to daily wagers |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97 |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengersial work |
| W9 | 06-08-82 | Xerox copy of the service certificate issued by Tirumayam branch |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions |
| W11 | Nil | Xerox copy of the Chapter XXX of Reference book on Staff matters regarding service conditions of part-time Employees & domestic servants |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |

| | | |
|-----|-----------|--|
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part-time Menial—G. Pandi. |
| W17 | 31-03-97 | Xerox copy of the appointment order to S. G. Pandi |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list |
| W20 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 17-11-87 | Xerox copy of the settlement. |
| W2 | 16-07-88 | Xerox copy of the settlement. |
| W3 | 27-10-88 | Xerox copy of the settlement. |
| W4 | 09-01-91 | Xerox copy of the settlement. |
| W5 | 30-07-96 | Xerox copy of the settlement. |
| W6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings |
| W7 | 28-05-91 | Xerox copy of the order in W.P. No. 7873/91 |
| W8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa |
| W9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99 |
| W10 | Nil | Xerox copy of the wait list of Trichy Module |
| W11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99 |

मई विसं, 19 जुलाई, 2007

का.आ. 2196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध निवोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई को पंचाट (संदर्भ संख्या 10/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/322/98-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2196.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/322/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT: K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 10/2004

(Principal Labour Court CGID No. 11/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri P. Rajendran : I Party/Petitioner

AND

The Assistant General : II Party/Management
Manager,
State Bank of India,
Z.O. Coimbatore.

APPEARANCE:

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K.S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/322/98-IR(B-I) dated 1-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 11/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the

constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 10/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Sri P. Rajendran, wait list No. 284 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at B. Kumarapalayam branch from 10-5-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the B. Kumarapalayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 10-5-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in B. Kumarapalayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to

reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which, amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employee for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the

Petitioner was wait listed as candidate No. 284 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provision is referred to above, came to the ground and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed under the settlement employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially even reduced. There were no regular vacancies available. The problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 284 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conversion of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the

appointment of temporary employees. After the expiry of the wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank on continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category. Thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the counter statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are:—

- (i) "Whether the demand of the Petitioner in Wait List No. 284 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set aside.

9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1982 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the I.D. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner were not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2197.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुरोध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचत (संदर्भ संख्या 183/2004) को प्रकशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल. 12012/564/98—आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2197.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 183/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/564/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT : K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 183/2004

[Principal] Labour Court CGID No. 222/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman).

BETWEEN

Sri P. Rajendran (deceased) : I Party/Petitioner

ANDThe Assistant General Manager,
State Bank of India,
Region-I, Trichy.**APPEARANCE:**For the Petitioner : Sri V.S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/564/98-IR(B-1) dated 26-4-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 282/99 and issued notices to both parties. But the petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-cum-Labour Court the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as ID No. 183/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P.S. Rajendran, wait list No. for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely

A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 638 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to

selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 638 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point Nos. 1 & 2:—

8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner died and it is posted for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment thron as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Petitioner have no personal right to claim employment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, I find the claim is abated and thus, it is dismissed but without any costs.

10. Thus the reference is disposed of accordingly.

(Dictated in the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.आ. 2198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचार (संदर्भ संख्या 121/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[नं. एल-12012/249/98-आई आर (बी-1)]

अवय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2198.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/2004) of the Central Govt. Industrial Tribunal - cum-Labour, Chennai as shown in the Annexure in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19/07-2007.

[No. L-12012/249/98-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT: K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 121/2004

[Principal Labour Court CGID No. 11/99]

(In the matter of the dispute for adjudication under clause (1) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

S. Arputhasamy (deceased) : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Region I, Trichy. : II Party/Management

APPEARANCE:

For the Petitioner : Sri V.S. Ekumbarani,
Authorised Representative.
For the Management : M/s. M.S. Sundar Arandan,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/249/98 (B-1-B) dated 08-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 111/99 and issued notices to both parties. But, the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-Cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.I. No. 121/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

2. The Schedule mentioned in that order is as follows:-

"Whether the demand of the workman Shri S. Arputhasamy, wait list No. 367 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that the Petitioner died on 20-11-04 and filed a petition to implead legal heirs of the deceased Petitioner. Since I have given a finding in the LR petition vide L.A. order No. 211/2005 dated 2nd November, 2005 that LRs application is not maintainable and since no orders were obtained from higher forum, I find the claim is abated and the Petition is dismissed without any costs.

4. Thus the reference is disposed of accordingly.

(Dictated in the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2199.—औद्योगिक विवाद अधिनियम, 1947 (1947 ज. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधकों के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 235/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-2007 को प्राप्त हुआ था।

[सं. एल 12012/465/98-आईयार(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 235/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/465/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 235/2004

(Principal Labour Court CGID No. 162/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. K. Ramachandran : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1 The Central Government Ministry of Labour, vide Order No. L-12012/465/98-IR (B-I) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 162/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 235/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Ramachandran, wait list No. 603 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Janapanchatiram branch from 24-10-83. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Janapanchatiram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 24-10-83, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Janapanchatiram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The waitlist suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 19(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 603 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 603 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(3) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 603 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioner who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91, which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the

settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Boparine Settlement while the 1988 settlement dealt with only wages in Class IV category who were paid wages on mutual agreement basis. In such circumstances, it is rightly contended the Respondent are not justified and reformed the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belong to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violation of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M11 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (ou) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Salary Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9.6.75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the

deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 1180 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme

Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the re-employment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY,

KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 **VAN SAG NATHAN ORIENTPAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS.** wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 **A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS** wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 **UNION OF INDIA AND OTHERS Vs. K.V. VIJESH** wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of stream surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 **SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS** wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 **SHANKAR SAN DASH Vs. UNION OF INDIA** wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala-fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 **STATE OF**

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc* temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 **ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS** wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 **HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS.** wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Suppl) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'first come-first go' is not mandatory but only directory; on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 **Secretary, State of Karnataka Vs. Uma Devi**, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or

casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in *CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh*, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in *CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR*, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in *2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY* wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|--|
| For the Petitioner | WW1 Sri K. Ramachandran WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked —

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|---|-----------|---|
| W1 | 1-8-88 | Xerox copy of the paper publishing in daily <i>Thanthi</i> based on Ex. M1. | W20 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W21 | 13-2-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W22 | 9-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W4 | 1-5-91 | Xerox copy of the advertisement in <i>The Hindu</i> on daily wages based on Ex. W4. | W23 | 9-7-92 | Xerox copy of the minutes of the bipartite meeting. |
| W5 | 20-08-91 | Xerox copy of the advertisement in <i>The Hindu</i> extending period of qualifying service to daily wagers. | W24 | 9-7-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms creation of part time general attendants. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W25 | 7-2-06 | Xerox copy of the Local Head Office Circular circular about conversion of part time employees and redesignate them as general attendants. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W26 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengersial work. | For the Respondent/Management :— | | |
| W9 | 30-5-96 | Xerox copy of the service certificate issued by Janapachatram Branch. | Ex. No. | Date | Description |
| W10 | 9-2-98 | Xerox copy of the service certificate issued by Janapachatram branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W11 | 25-11-85 | Xerox copy of the service certificate issued by Janapachatram branch. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W13 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W14 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M5 | 30-07-96 | Xerox copy of the settlement. |
| W15 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj | M6 | 03-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W16 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan | M7 | 28-05-93 | Xerox copy of the order in W.P. No 7872/91. |
| | | | M8 | 15-06-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-01-99 | Xerox copy of the order of Supreme Court in SLP No 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1803/99. |

नई दिल्ली, 19 जुलाई, 2007

क्र.अ. 2200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधकों के संघट्ट नियोजकों और उनके कर्मचारों के बीच, अनुसंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/ग्राम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 244/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं एल-12012/461/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 244/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/461/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT :

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 244/2004

(Principal Labour Court CGID No. 171/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. R. Jayavelu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Elambaram,
Authorised Representative

For the Management : M/s. K. Veeramani
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/461/98-IR (B-I) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 171/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 244/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri K. R. Jayavelu wait list No. 452 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thiruvallur Main branch from 17-5-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Thiruvallur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 17-5-1984, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Ashbatter state branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sasry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work from him by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 720 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-3-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 451 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 452 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioner who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 I.A.S. & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/release to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, tarashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, those persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he supposed that settlement dated 27-10-88 was

not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the avancement of MW1 and the statements in Counter statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M10 namely wait list is not in conformity with the instructions of Ex.M1 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at

the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MWT. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5.

Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the

provisions of law and implemented by the Respondent/Bank and the claim of the Petitioner are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 2189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliatory proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement

of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as they are an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JULIA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he

should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of stream surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc* temporary employee who has been continued for one year should be regularised even though (a) no vacancy is

available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SEC 3657 HIMANSHU KUMAR V. DYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these

circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by this itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the

settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

| | |
|--------------------|--|
| For the Petitioner | WW1 Sri R. Jayavelu WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex. No. | Date | Description |
|---------|--------|---|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |

| | | | | | |
|-----|---------|---|--|-----------|---|
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W19 | 17-3-97 | Xerox copy of the Service particulars—J. Velmurugan. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. | W20 | 26-3-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 1-3-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W21 | 31-3-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-8-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W22 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. | W23 | 13-2-98 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W24 | 9-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messangerial work. | W25 | 9-7-92 | Xerox copy of the minutes of the bipartite meeting. |
| W9 | Nil | Xerox copy of the service certificate issued by Thiruvallur Branch. | W26 | 9-7-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W10 | 9-7-96 | Xerox copy of the service certificate issued by Ambattur Industrial Estate branch. | W27 | 7-2-06 | Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W11 | 4-7-96 | Xerox copy of the service certificate issued by Ambattur Industrial Estate branch. | W28 | 31-12-85 | Xerox copy of the Local Head Office about appointment of temporary employees in subordinate cadre. |
| W12 | 16-4-97 | Xerox copy of the service certificate issued by Ambattur Industrial Estate branch. | For the Respondent/Management:— | | |
| W13 | 1992/93 | Xerox copy of the attendance register. | Ex. No. | Date | Description |
| W14 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W16 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M4 | 9-1-91 | Xerox copy of the settlement. |
| W18 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M5 | 30-7-96 | Xerox copy of the settlement. |
| | | | M6 | 9-6-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-96 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 29-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

सं.अ. 2201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संग्रह निबोधनों और उनके कार्यवाहों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचक (संदर्भ संख्या 243/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/456/1998-आईएमए(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 243/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/456/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 243/2004

[Principal Labour Court CGID No. 170/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri P. Selvam : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Vetramani,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/456/98-IR (B-1) dated 12-2-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 170/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 243/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Selvam, wait list No. 607 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kalpakkam branch from 24-10-1979. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kalpakkam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 30-5-1998, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Chindripet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service as due right. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action is not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sasry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.607 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 607 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has

no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 607 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW11 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, fanashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based

on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list

Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'bodies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any

bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean "that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes

were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent

further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1864 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIREESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 **ASHWANT KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS** wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 **HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS.** wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 **SECRETARY, STAFF OF KARNATAKA Vs. UMA DEVI**, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued

permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in *CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH*, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in *CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR*, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in *2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY* wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

| | |
|--------------------|------------------------|
| For the Petitioner | WW1 Sri P. Selvam |
| | WW2 Sri V. S. Kambaram |
| For the Respondent | MW1 Sri C. Mariappan |
| | MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|---------|--|---|-----------|---|
| W1 | 1-5-58 | Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1 | W16 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W17 | 17-3-97 | Xerox copy of the service particulars J. Velmurugan. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W18 | 26-3-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 1-5-54 | Xerox copy of the advertisement in <i>The Hindu</i> on daily wages based on Ex. W4. | W19 | 31-3-97 | Xerox copy of the appointment order to Sri G. Pandi |
| W5 | 20-4-91 | Xerox copy of the advertisement in <i>The Hindu</i> extending Period of qualifying service to daily wagers. | W20 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W21 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W22 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W23 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W9 | 6-5-80 | Xerox copy of the service certificate issued by Kalpakkam branch. | W24 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms creation of part time general attendants. |
| W10 | 22-3-96 | Xerox copy of the service certificate issued by Thousand Lights branch. | W25 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W11 | 17-1-97 | Xerox copy of the service certificate issued by Ashok Nagar branch. | W26 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. | For the Respondent's Management :— | | |
| W13 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-55. | Ex. No. | Date | Description |
| W14 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muradikannan. | M1 | 17-11-80 | Xerox copy of the settlement. |
| W15 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M2 | 16-07-84 | Xerox copy of the settlement. |
| | | | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 06-01-87 | Xerox copy of the settlement. |
| | | | M5 | 10-07-90 | Xerox copy of the settlement |
| | | | M6 | 09-06-55 | Xerox copy of the minutes of conciliation proceedings |
| | | | M7 | 28-05-97 | Xerox copy of the order in W.P. No. 987297. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O.P. No. 3787/97 of High Court of Orissa. |
| | | | M9 | 18-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3083/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16259 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 19 जुलाई, 2007

क्र.अ. 2202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध विद्योक्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 221/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/345/98-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 221/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/345/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 221/2004

[Principal Labour Court CGID No. 59/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri A. Sekar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/345/98-IR (B-I) dated 03-02-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 59/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 221/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri A. Sekar, wait list No. 392 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Siruthozhil branch from 10-06-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to his counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Siruthozhil branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 10-6-1981, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Anna Nagar West branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required

any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his own employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliating officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.392 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-91. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 392 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union or firm and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 392 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitutes/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W4. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and change. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlements dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 25-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by cunning equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same terms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, the wait list was released / published even after the Court order in WMP No.11922/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Salary Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.L. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-'15 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were hush-hush which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the ruling reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL, A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 111 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein a Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of malafides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if

the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workman also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is a name among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disavowing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is whether the demand of the workman with wait list, N.A. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereof as temporary messenger is justified? The Petitioner contended that the reattachment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only a duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not properly framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioner has been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioner and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VUEESI wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems ipseated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends, say several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in every and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANI KUMAR AND OTHERS V. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointments in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS V. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA V. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain, not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee." It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CJD 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS V. SOMNATH SINGH, wherein the Supreme Court

has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR VS. SURINDER KUMAR, the Supreme Court has held that "It is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION VS. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|---|
| For the Petitioner | WW1 Sri A. Sekar WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :

| Ex. No. | Date | Description |
|---------|---------|---|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|----------|--|---|-----------|---|
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W20 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi |
| W4 | 01-05-91 | Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4. | W21 | 31-3-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W22 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. | W23 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W24 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W25 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W9 | 14-09-81 | Xerox copy of the service certificate issued by Simshozhil Branch. | W26 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms creation of part time general attendants. |
| W10 | 3-8-88 | Xerox copy of the service certificate issued by Mannady Branch. | W27 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W11 | 10-6-89 | Xerox copy of the service certificate issued by Purasawalkam Branch. | W28 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W12 | 25-08-89 | Xerox copy of the service certificate issued by Triplicane Branch. | For the Respondent/Management :— | | |
| W13 | 21-12-92 | Xerox copy of the service certificate issued by Anna Nagar Branch. | Ex. No. | Date | Description |
| W14 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj | M4 | 09-01-91 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan | M5 | 30-07-96 | Xerox copy of the settlement. |
| W19 | 17-03-97 | Xerox copy of the Service particulars—J. Velmurugan | M6 | 09-06-96 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-06-91 | Xerox copy of the order in W.P. No. 387/91 |
| | | | M8 | 15-06-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99 |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in C.M.P. No. 16389 and 16290/99 in W.A. No 1863/99 |

नई दिल्ली, 19 जुलाई, 2007

क्र.आ. 2203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 234/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/442/98-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/442/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT :

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 234/2004

[Principal Labour Court CGID No. 160/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. S. Sivasubramanian : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Z. O. Chennai. : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Elumbaram,
Authorized Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/442/98-IR (B-1) dated 12-02-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 160/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 234/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri R.S. Sivasubramanian, wait list No.513 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Royapettah branch from 30-09-85. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Royapettah branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Mandaveli branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the

Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 510 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 510 he was not appointed. The said settlements were bona fide which were the only workable solution and is hindering on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements are operated throughout the country. The Tamil Nadu Industrial Establishment (Conferral of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to

say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 513 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioner who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come— first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, furnishes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, those persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the manner of arriving at qualifying service for interview and selection. But temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlements dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4

respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is

further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (a) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Salary Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 S.C.J. 1114, *SINGH vs. RESERVE BANK OF INDIA AND OTHERS* wherein the Supreme Court has held that "to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and fill date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition

of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioner have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II L.J. 539 *WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION* wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided

into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the Bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the Bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION

Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 **VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS.** wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 **A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS**, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13 I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 **UNION OF INDIA AND OTHERS Vs. K. V. VIREESH** wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 **SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS** wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 **SHANKARSAN DASH Vs. UNION OF INDIA** wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 **STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS** wherein the Supreme Court has held that "now coming to

the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc* temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 11 SCC 1 ASHWANT KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed

only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in ATR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further,

the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in **CDI 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS VS. SOMVIR SINGH**, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in **CDI 2006 SC 395 MUNICIPAL COUNCIL, SUANPUR VS. SURINDER KUMAR**, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in **2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION VS. S.C. PANDEY**, wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

| Witnesses Examined: | | | |
|---------------------|--|----------------------------------|--|
| For the Petitioner | WW1 Sri R.S. Sivasubramanian WW2 Sri V. S. Elombaram | W16 | 17-03-97 Xerox copy of the Service particulars—J. Veltharugan. |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam | W17 | 26-03-97 Xerox copy of the letter advising selection of part time Menial—G. Pandi |
| Documents Marked :— | | | |
| Ex. No. Date | Description | | |
| W1 1-8-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W18 | 31-03-97 Xerox copy of the appointment order to Sri G. Pandi |
| W2 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W19 | Feb. 2005 Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W3 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W20 | 13-02-95 Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W4 01-05-91 | Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4. | W21 | 09-11-92 Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W5 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W22 | 09-07-92 Xerox copy of the minutes of the Bipartite meeting. |
| W6 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. | W23 | 09-07-92 Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants. |
| W7 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies And filling them before 31-3-97. | W24 | 07-02-06 Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W8 Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengersial work. | W25 | 31-12-85 Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W9 30-09-85 | Xerox copy of the service certificate issued by Royapettah Branch. | For the Respondent/Management :— | |
| W10 01-11-96 | Xerox copy of the service certificate issued by Mandaveli Branch. | Ex. No. Date | Description |
| W11 Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | M1 | 17-11-87 Xerox copy of the settlement. |
| W12 Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 | M2 | 16-07-88 Xerox copy of the settlement. |
| W13 06-08-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan | M3 | 27-10-88 Xerox copy of the settlement. |
| W14 06-08-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj. | M4 | 09-01-91 Xerox copy of the settlement. |
| W15 06-08-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post —J. Veltharugan | M5 | 30-07-96 Xerox copy of the settlement. |
| | | M6 | 09-06-95 Xerox copy of the minutes of conciliation proceedings. |
| | | M7 | 28-06-91 Xerox copy of the order in W.P. No.7872/91. |
| | | M8 | 15-05-98 Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | M9 | 10-07-99 Xerox copy of the order of Supreme Court in SLP No. 3082/99 |
| | | M10 | Nil Xerox copy of the wait list of Chennai Module. |
| | | M11 | 25-10-99 Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99 |

नई दिल्ली, 19 जुलाई, 2007

क्र.अ. 2204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबंध में निम्नलिखित विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (सर्विस संख्या 233/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/431/98-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2204. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/431/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 233/2004

(Principal Labour Court CGID No. 152/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri. L. Babu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/431/98-IR (B-1) dated 10-2-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 152/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 233/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri L. Babu, wait list No. 431 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periamet branch from 6-8-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Periamet branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-8-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Avadi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 52(4) of Sastri Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment, and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.431 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only to leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 431 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 431 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MII. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25O and 25H are very much applicable to the Petitioners who are retrenched messengers

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/refer to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW 1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India'. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M1 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees.

the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (a) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastri Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH V. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal". Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW 1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 26-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 I.L.J 559 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression "actually worked under the employer" cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 18(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employer or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of malafides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(3) of the IDA, and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding

on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Court may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that an union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the reengagement made by the Respondent Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of terminology of a reference and he relied on the rulings reported in 1998 LAB IC 345 SHOPRIARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only to try and that is to decide the points of merits and not to find out some technical defects in the wording of reference, subjecting the point

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "It has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd.'s case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VJEEESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc* temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he

appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an *ad hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The

concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due

process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently attended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was

not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW1 Sri L. Babu
WW2 Sri V. S. Ekambaran
For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description |
|---------|--------|---|
| W1 | 1-8-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |

| | | | | | |
|-----|----------|--|---|-----------|---|
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W18 | 17-3-97 | Xerox copy of the Service particulars—J. Velmurugan. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W19 | 26-3-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 1-5-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W20 | 31-3-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-4-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. | W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-5-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. | W22 | 13-2-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 28-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 9-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W24 | 9-7-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 20-11-93 | Xerox copy of the service certificate issued by Periamet Branch. | W25 | 9-7-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants. |
| W10 | 20-11-93 | Xerox copy of the service certificate issued by Avadi branch. | W26 | 7-2-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W11 | 25-1-05 | Xerox copy of the letter from Petitioner to Respondent/Management for service certificate. | W27 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W12 | Nil | Xerox copy of the postal acknowledgement. | For the Respondent/Management :— | | |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees. | Ex. No. | Date | Description |
| W14 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Maralikannan. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W16 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 6-3-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M4 | 9-1-91 | Xerox copy of the settlement. |
| | | | M5 | 30-7-96 | Xerox copy of the settlement. |
| | | | M6 | 9-6-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in G. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16239 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 जुलाई, 2007

क्र.अ. 2205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार एरोनॉटिकल कम्युनिकेशन स्टेशन के प्रबंधन के संबंध निरोधकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/क्रम न्यायालय नं.-1 चण्डीगढ़ के पंचाट (संदर्भ संख्या आई.डी.सी. 73/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-07-2007 को प्राप्त हुआ था।

[सं. एल-11012/12/97-आई आर (एम)]

एन. एस. सोरा, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I. D. 73/98) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Aeronautical Communication Station, Nuh, Gurgaon, and their workmen, which was received by the Central Government on 24-07-2007.

[No. L-11012/12/97-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. I. D. 73/98

Shri Lakshmi Chand S/o Sh. Ram Farshad, R/o Village and Post Office Maheshpur, THS, Palwal, Distt. Faridabad.

... Applicant

Versus

The Officer Incharge, Aeronautical Communication Station, Nuh, Distt., Gurgaon Haryana-122001

... Respondent

APPEARANCES

For the workman : Shri D.R. Sharma

For the management : Shri Jagdish Manchanda

AWARD

Passed on 4-7-2007

Central Government vide notification No. L-11012/12/97-IR (Mfsc.) dated 18-3-98 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Aeronautical Communication Station, Nuh, Airport Authority of India, in terminating the services of Shri Lakshmi Chand, Casual Labour w.e.f. 1-9-1996 is legal and justified? If not, to what relief the workman is entitled to?"

2. It is submitted in the claim statement by the workman that he was working with the management since 4-9-92 as Chowkidar as daily wage basis at Transmitter Centre Aeronautical Communication Station, Nuh, Distt. Gurgaon and his work and conduct is satisfactory. That the management on 1-9-1996 terminated his services without assigning any reason. That the workman was appointed on a temporary post and has completed more than 240 days in a calendar year. Therefore, the above termination is illegal unwarranted, unconstitutional, mala fide, arbitrary and against the provision of law and also against the principle of natural justice as no notice, no charge sheet or enquiry was held, some junior to the workman are still working and the management have not adopted the procedure of last cum first. Therefore, the management has contravened the provisions of Section 25-G, H and F of the I.D. Act. The management also withheld the wages of workman for the period 20-7-1996 to 31-8-96. The workman approached the ALC Rohtak for the conciliation proceedings and the management has given the detail of the workman before the ALC for the period September 92 to December 1993 in which it clearly shows that the workman has worked for more than 240 days. The workman prayed for setting aside the termination order and for reinstatement of the workman for full back wages all consequential benefits.

3. In the written statement management in preliminary objection submitted that claim statement is not maintainable as the workman was engaged as casual labour in lieu of Ramphal and Jagdish who were proceeded on leave and workman was engaged on leave vacancy. It was made clear to the workman that they have been engaged as casual labourer w.e.f. 4-9-92 with clear cut instructions till these two Chowkidars reports for duty, therefore, there is no case for the alleged workman with full backwages. It is also submitted that workman who was appointed as casual labourer and his services were dispensed with in the month of November 1992, he attended the office for 29 days and was paid the wages of Rs. 1015. Dishonestly and cleverly the workman has tampered the attendance register and written his own name over the name of Rajesh Kumar who had actually performed the duties of casual labourer. The workman was again engaged as casual labourer in Dec. 1992 and performed his duties as casual labourer till December 1993. The said Jagdish Chand Chowkidar reported for duty on 30-9-92 and Ram Phal on 3-10-1992. The workman has not completed 240 days therefore, the management has not complied with provisions of the I.D. Act 1947 as he was appointed against the leave vacancy and as and when the person reported back on duty, the workman was not entitled to continue on the same post. It is also submitted that the reference has been raised by the workman after a gap of more than 4 years. On merits also, it is submitted that workman was engaged as chowkidar in leave vacancy and his work and conduct was not satisfactory. The appointment letter clearly stipulates that the engagement was made till two Chowkidars reported

back for duty and as regular Chowkidars reported back for duty on 30-9-92 and 3-10-1992, his services have been terminated, the workman was never employed by the management w.e.f. 1-4-1994 to 18-12-1994, therefore, there is no question of termination of his services, the workman was paid wages for the actual days he worked with the management.

4. Rejoinder also filed by the workman reiterating the claim made in the claim statement.

5. In evidence the workman filed his own affidavit in evidence and also appeared as his own witness as WW1. On the other hand the management filed in evidence one affidavit of A.S. Yadav Officer-in-charge, Airport Authority, National Airport Chandigarh who also appeared as MW1 in evidence on behalf of the management. Both witnesses of the workman and the management cross-examined at length by the counsel for the parties.

6. Workman filed written arguments. On the other hand the management did not file written arguments, rather requested that the case may be decided on the basis of written statement and affidavit of the management and on other record.

7. In written arguments it is submitted by the workman that he was engaged as Chowkidar on 4-9-92 and continued working till 31-8-1996 when his services were terminated without making compliance with the provisions of Section 25F of the I.D. Act 1947; that he had completed more than 240 days in 1993, 1994 and 1995 and also 240 days preceding to the date of termination i.e. 31-8-1996, that the management failed to produce the relevant record despite repeated opportunities to the management and the management in order to frustrate the claim of the workman leveled the allegation of tempering the official record though no action has been taken by the management and no FIR was lodged. That in reply before the ALC the management admitted of having completed 240 days by the workman. That the management tried to show the workman under the contractor from Jan. 1994 to 31-8-1996, but no agreement or contract was produced by the management. Ex. W9 the documents of the management shows that workman worked from Feb. to July 1996 and Ex. W10 shows that workman was appointed on 8-10-1992 w.e.f. 4-9-92 and R1 also shows that he performed his duty from March 1996 to 30-8-96 and the existence of the documents never questioned by the management; rather it is admitted that the signatory of the affidavit is not aware whether the workman was engaged as labour contractor having valid license and it is further admitted by the management that whenever a contractor is engaged for any work an agreement is executed and the witness of the management has shown his unawareness about executing of agreement with the workman. It is further submitted that the workman never tempered with the record as he is illiterate. The AR of the workman also placed reliance on the cases of 1999(2) SLR 01, AIR 1997 S.C. and a judgment of CAT reported in 2002(3) ATJ 441. In this case learned counsel for the management did not file written arguments

and had only relied upon his written statement, affidavit, oral evidence and judgments of the Hon'ble Supreme Court. As per schedule this court has to adjudicate upon the issue whether the action of the management of Aeronautical Communication Station, Nuh, Airport Authority of India, in terminating the services of Shri Lakshmi Chand, Casual Labour w.e.f. 1-9-1996 is legal and justified? If not, to what relief the workman is entitled to?

8. I have found that as per reference received for adjudication both the parties are disputing the date of termination. The management has denied that workman worked as a casual labourer w.e.f. 31-8-96 and as on 1-9-96 his services were terminated. Contentions of the management in their written statement and in comments also filed before the ALC during the conciliation proceedings are that workman was engaged, as a casual labour to perform the duty of a Chowkidar in leave vacancy and worked w.e.f. 4-9-92 to 18-12-1993 as detailed in written statement as well as in comments filed before the ALC. Document Ex. M2 proves approval of engaging on leave vacancy. The contentions of the workman are that he worked w.e.f. 4-9-92 to 31-8-96 and his services were terminated without assigning any reason on 1-9-96. The workman has also taken a plea that workman has completed 240 days in a calendar year and this fact has been admitted by the management in written statement & comments filed before the ALC. On perusal of the comments I found that management has nowhere admitted that workman has completed 240 days in a calendar year or preceding to the date of termination, rather in the comments filed before the ALC and written statement before this court, it is submitted by the management that Lakshmi Chand remain engaged as casual labour at ACS Nuh against leave vacancy of regular Chowkidar till 18-12-1993 and thereafter M/s. Lakshmi Chand Labour contractor Maheshpur (Palwal) was engaged on contract basis to provide watch and ward to ACS, Nuh from January 1994 till the contract was dispensed with effect from 31-8-96. He was never employed temporarily by the Deptt. w.e.f. 1-4-92 to 18-12-93, thus question of termination does not arise and management has given the detail of working days in written statement as well as in comments. The management has taken a plea that workman has tempered with the attendance register to increase his attendance. Though the management did not filed original acquaintance Rolls and workman has filed photo copies of those acquaintance rolls management Ex. W1- W.8 wherein I have found over writing of workman on some others name on very first page at Sr. No. 7 name of a workman Rajesh Kumar had been written. It was struck out and Lakshmi Chand is written and thus appear clearly with naked eye. Similar is the situation on page 2 and 3. On page 4 name of Lakshmi Chand workman is written in different hand which also show that some other name below was removed. Similar is the situation on page 5, 6 and March 93 show the name of the workman Lakshmi Chand at Sr. No.4 showing, 29 days working and it is correct and this page appears to be genuine.

9. Workman has not given any explanation how his name appearing over the name of Rajesh Kumar at several pages and these documents attendance record may be photo copies is being produced by the workman on the record himself.

10. Further workman has taken a stand that throughout up to date of the termination he worked as casual worker whereas contention of the management are that workman worked thereafter as a contractor. He was given contract and he also deposited the security and also received on termination of contract his security that I have also seen the document Ex. M2 is a letter dated 8-10-92 addressed to Nuh Airport Authorities regarding engagement of two casual labourer in absence of chowkidar in ACS Nuh and Ex. M3 is the copy of application wherein workman requested to refund of his security money of Rs. 3840 which was refunded to him. In the evidence of the workman it has also come that Air Port Nuh is not in existence now.

11. Learned counsel for the workman submitted that as proved and also has admitted by the management that workman completed 240 days and management terminated his services without complying with the provisions of Section 25-F, his termination is void *ab-initio* w.e.f. 1-9-96 and workman should be reinstated with full back wages. On the other hand contention of the management are that workman was never appointed on temporary basis, he was simply engaged on leave vacancy which run upto 18-12-93 and thereafter he worked as a contractor by a contract which was executed and he has also not denied but his contentions are that workman was not a valid licensee and transaction is a sham transaction. Management has relied JT 2005 (11) Supreme Court DGM Oil and Natural Gas Corporation Ltd. Vs. Elias Abdul Rehman wherein it has been held that no. of days worked put in broken period can not be taken as continuous employment for the purpose of Section 25-F. In Himanshu Kumar Vidyarthi Vs. State of Bihar the Hon'ble Supreme Court has held that where petitioner was not appointed in accordance with the statutory Rules but were engaged on the basis of need of work on daily wages their disengagement from service not a retrenchment under I.D. Act. Since they are only daily wage employees having no right to post, their disengagement can not be held arbitrary. In manager R.B.I Bangalore Vs. S.Mani JT 2005 (3) 248 it is held that non regularization of service of respondents for alleged misconduct of producing false certificate in criminal proceedings court however acquitting the respondents giving the benefit of doubt, request of respondent for re-employment turned down is correct. Management also relied on the constitutional bench case of Hon'ble Supreme Court in Uma Devi Vs. State of Karnataka. On the other hand workman has referred to 1994(2) SLR contract labour employed for maintenance work, the maintenance work can not by any stretch be ascribed to be of seasonal nature. In AIR 1997 Supreme Court 645 Air India Statutory Corporation Vs. United Labour Union it is held that Act is

a social welfare measure, interpretation, shift of judicial orientation must be from private law to public law interpretation. Workman also relied on a CAT judgment that applicants were appointed as sweepers on daily wage basis, thereafter department changed their nature of employment and treating them as casual labourers, claim regularization and regular pay scale of group D employee allowed.

12. In view of the above judgments referred by both the parties, I have found that in the case of the judgment of the Hon'ble Supreme Court in Himanshu Kumar Vidyarthi and Uma Devi Vs. State of Karnataka decided by a constitutional Bench of the Hon'ble Supreme Court it is now held that appointment made on the basis of need of work, termination of their services can not be construed as retrenchment. The petitioner were not appointed in accordance with the rules but were engaged on the basis of need of work, on daily wages, their disengagement from service held not retrenchment under the I.D. Act as they have no right to the above post. Similarly more strong view was taken by the Hon'ble Supreme Court in Constitutional Bench case in Uma Devi Vs. State of Karnataka against irregular, stop gap arrangement where statutory rules were not followed instead some other methods were adopted in making appointments temporarily, workman so appointed have no right to post. I have also found that workman also made it clear that there is no existence of Nuh Airport and it appears to be disbanded and not functional and that management by evidence of Ex. M2 has proved that there was a leave vacancy for casual engagement and on that leave vacancy proved on record workman was engaged in the beginning as a casual labourer and thereafter engagement made as a contractor without verifying that he is without license for a long periods which is illegal act at the part of Nuh Airport authorities. It is further established that Nuh Airport is no more in existence. It has come in evidence that at several places in the attendance register the name of the workman is written after striking out the name of other workman and there is no explanation from the side of the workman. If this illegal tempering with the attendance of several year is kept in mind, he has not completed even 240 days in any calendar year. Further the case of the management is that workman was engaged as casual labourer w.e.f. 4-9-92 with clear cut instructions that he is appointed till chowkidar who were on leave return back and when regular chowkidar returned his services were dispensed with. The management proved that workman worked upto December 1993 as well thereafter and there is tempering with the record by him as his name is written after striking out the name of one Rajesh Kumar in several months and workman is relying that attendance alleged to existed due to alleged tempering. No FIR lodged taking a lenient view does not make the act legal. and clearly without this period workman did not say that he worked for 240 days. In the circumstance he also not disprove the contentions of the management that he worked after the period as submitted by the management as a

contractor labour taking contract himself depositing the security and when contract is over withdrawing that security amount. Here workman desires that his omissions & mistakes should be forgotten & Management same mistakes be taken seriously. In the circumstance, I am of the considered view that management has proved that workman was engaged as a casual labourer in leave vacancy and worked up to December 1993 and thereafter he worked as a contractor and this situation is created by the fault & bad contentions of both parties and therefore, there is no question of termination of his services as on 1-9-1996 as thereafter contract was over and he also withdrew his security deposit.

13. Further I am of the considered view that workman has failed to prove that the action of the management of Aeronautical Communication Station, Nuh, Airport Authority of India, in terminating the services of Sri Lakshmi Chand, Casual labour w.e.f. 1-9-1996 is illegal and unjustified, management has denied having passed any such order and as per their record his termination is much prior in December 1993. There is no violation in termination on 1-9-1996 of the services of workman of Section 25-G, H & I of LD. Act. Therefore, I am of the considered view that management proved that termination was just & legal as contract may be illegal was over & workman had no right for reinstatement. Therefore on the other hand workman failed to prove this reference in his favour, therefore, he is not entitled to any relief. The reference is thus answered in favour of the management and against the workman. Central Govt. be informed. File be consigned to record.

Chandigarh.

RAJESH KUMAR, Presiding Officer

नई दिल्ली, 24 जुलाई, 2007

क्र.आ. 2206.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अगस्त, 2007 को इस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त हो चुकी है] के उपबंध उद्दीसा के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्,

“सुंदरगढ़ जिले के पानपोष तहसील में कुआरमुण्डा, चड्डी हरिहरपुर, बीजाबाहाल, फेलिपोश, कालोसिहिरिया, जमुनानाकी के राजस्व गाँव शामिल हैं।”

[संख्या एस-38013/23/07-एस.एस.-1]

एस. डी. खवियर, अवर सचिव

New Delhi, the 24th July, 2007

S.O. 2206.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Orissa namely:—

“The Revenue Village of Kuarmunda, Chadri Hariharpur, Bijabahal, Feliposh, Kalosihiria, Jamunanaki in the Tahsil of Panposh, Kuarmunda in the District of Sundergarh.”

[No. S-38013/23/2007-SS-1]

S. D. XAVIER, Under Secy.

नई दिल्ली, 24 जुलाई, 2007

क्र.आ. 2207.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अगस्त, 2007 को इस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा 76 की उपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त हो चुकी है] के उपबंध पश्चिम बंगाल के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्,

“बनारगढ़ क्षेत्र का अवशेष गैर कार्यन्वित क्षेत्र, अर्थात् मीरपुर नुंगी के पीजे, बंगाला और जगतला, महेशतला पुलिस स्टेशन जिला दक्षिण 24 परगना।”

[संख्या एस-38013/22/07-एस.एस. 1]

एस. डी. खवियर, अवर सचिव

New Delhi, the 24th July, 2007

S.O. 2207.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of West Bengal namely:—

“Remaining unimplemented area of Banaragar, i.e. Mouzas of Mirpur Nungi, Banagla and Jagtala in Maheshtala P.S., District - South 24 Parganas”.

[No. S-38013/22/2007-SS-1]

S. D. XAVIER, Under Secy.